

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

In the Matter of Environmental Defense Institute)
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Filing Date: May 26, 2015) Case No.: FIA-15-0029
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Issued: June 5, 2015

Decision and Order

On May 26, 2015, Environmental Defense Institute filed an Appeal from a determination issued on May 15, 2015, by the Department of Energy, Idaho Operations Office (DOE-ID) in response to a request for documents that Environmental Defense Institute submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. As explained below, we have determined that the Appeal should be denied.

I. Background

On April 26, 2015, Environmental Defense Institute filed a FOIA request with DOE-ID for the following “government and contractor records, for Idaho National Laboratory (INL) or Idaho Cleanup Project (ICP)”:

- The technical basis for monitoring INL radiological emissions including the most current version and documentation of all changes to previous revision of DOE/ID-11485, Technical Basis for Environmental Monitoring and Surveillance at the Idaho National Laboratory Site.
- Analysis and documentation not available on public information websites pertaining to the assessment of the radiological buried waste at the Radioactive Waste Management Complex at INL, including most current and documentation of revisions to previous revisions of documents listed below, and other documents if forming the approval basis for the buried waste:
 - U.S. Department of Energy, 2008. Composite Analysis for the RWMC Active Low-Level Waste Disposal Facility at the Idaho National Laboratory Site. DOE/NE-ID-11244. Idaho National Laboratory, Idaho Falls, ID.
 - U.S. Department of Energy, 2007. Performance Assessment for the RWMC Active Low-Level Waste Disposal Facility at the Idaho National Laboratory Site. DOE/NE-ID-11243. Idaho National Laboratory, Idaho Falls, ID.

- Analysis of contaminants and reporting of contamination levels of chemical and radionuclides in INL worker drinking water since the labs inception in 1949 not currently available to the public online via USGS.gov, GSSESER.COM, or IDEQ.gov. This would include, but not be limited to documents prior to the mid 1990s such as INEL Environmental Monitoring Program documents applicable to drinking water on the Idaho site.

FOIA Request Letter from Mr. Chuck Broschious, Board President, Environmental Defense Institute, to Mr. Clayton Ogilvie, Freedom of Information Officer, DOE-ID (April 26, 2015). On May 5, 2015, DOE-ID sent its Determination Letter stating that the requested documents relating to the first two bulleted items could be found online in the DOE-ID electronic reading room. Determination Letter from Mr. Clayton Ogilvie, Privacy Act Officer, DOE-ID, to Mr. Chuck Broschious, Environmental Defense Institute (May 5, 2013). In regards to the third bulleted item, the Determination Letter stated that the documents pertaining to INL water were all located on the Office of Scientific and Technological Information (OSTI) website and other publicly accessible websites. *Id.* On May 26, 2015, Environmental Defense Institute appealed the determination letter to the Office of Hearings and Appeals (OHA) asking OHA to order DOE-ID “to conduct a reasonable search and release all the documents requested in their entirety” specifically those relating to the third bulleted item. Appeal Letter from Chuck Broschious, Board President, Environmental Defense Institute, to Director, OHA (May 16, 2015).

II. Analysis

Environmental Defense Institute contends that because the DOE “relies on monitoring reports of drinking water wells for the technical basis for monitoring the contamination in its drinking water wells at INL” then it must have documentation of “which wells were used for drinking, and...its assessment of drinking water contamination levels...” Appeal Letter at 1-2. Environmental Defense Institute further contends that the website cited in the Determination Letter only contains relevant information “for a handful of years” and that not all the reports listed on the website are actually available. *Id.* at 2.

The FOIA requires that a search for responsive documents be reasonable, not exhaustive. “[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 v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). In cases such as these, “[t]he issue is *not* whether any further documents might conceivably exist but rather whether the government’s search for responsive documents was adequate.” *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1982) (emphasis in original). Generally when responding to a request for information, an agency is required under the FOIA to release responsive documents in its possession. However, if the agency has already placed the responsive information in the public domain, it need not produce that information in response to a FOIA request. *Crews v. IRS*, No. 99-8388, 2000 WL 900800 at *6 (C.D. Cal. April 26, 2000).

We contacted DOE-ID for further information regarding its Determination Letter. DOE-ID informed us that a couple of weeks before receiving Environmental Defense Institute’s FOIA

request, it received another inquiry through its Public Affairs office requesting the exact same records. Email from Clayton Ogilvie, FOIA Officer, DOE-ID, to Brooke DuBois, Attorney-Advisor, OHA (June 1, 2015). At that time, DOE-ID did a physical and digital search for responsive records. *Id.* About a dozen responsive electronic records were located at this time and made available in the DOE-ID electronic reading room. *Id.* When Environmental Defense Institute's FOIA request was received, with identical language as the previous Public Affairs inquiry, no additional search was conducted because all responsive documents were at that point available in either the DOE-ID electronic reading room or on the OSTI website. *Id.* The search done for responsive documents in the non-FOIA inquiry was reasonably calculated to uncover the requested materials similarly to searches done for FOIA requests. Email from Clayton Ogilvie, FOIA Officer, DOE-ID, to Brooke DuBois, Attorney-Advisor, OHA (June 2, 2015).

III. Conclusion

Based on the information available, we are satisfied that DOE-ID has conducted a search reasonably calculated to uncover the materials sought by Environmental Defense Institute, and that this search was, therefore, adequate under the FOIA. We also find that all responsive documents have been made available in the public domain. Thus, we will deny the present Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on May 26, 2015, by Environmental Defense Institute, Case No. FIA-15-0029, 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 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 your right to pursue litigation. You may contact OGIS in any of the following ways:

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Poli. A. Marmolejos
Director
Office of Hearings and Appeals

Date: June 5, 2015