

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

In the Matter of Wynship W. Hillier)	
)	
Filing Date: March 2, 2016)	Case No.: FIA-16-0021
)	
_____)	

Issued: March 18, 2016

Decision and Order

On March 2, 2016, Wynship W. Hillier (Appellant) appealed a determination that he received from the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA) on January 27, 2016 (Request No. 16-00032-H). In that determination, NNSA responded to a request 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. The Appellant challenges NNSA’s determination that there are no documents responsive to his request. As explained below, we have determined that the Appeal should be denied.

I. Background

On November 20, 2015, the Appellant filed a request for “aggregate documents such as lists, databases, or logs, detailing relationships established between NARAC and its clients granting access to NARAC-provided models...extending back through 2007....” Freedom of Information Act Request from Wynship W. Hillier (November 20, 2015). In its January 20, 2016, Determination Letter, NNSA states that it conducted a search of the National Atmospheric Release Advisory Center (NARAC), and that no responsive documents were found. Determination Letter from Jane R. Summerson, Authorizing and Denying Official, NNSA to Wynship W. Hillier (January 20, 2016).

On March 2, 2016, the Appellant appealed this Determination Letter challenging the finding of no responsive documents. Appeal Letter from Wynship W. Hillier to Director, Office of Hearings and Appeals (February 23, 2016). In his Appeal, the Appellant states that NNSA’s response is “frivolous,” and that he finds it “impossible to believe that the requested records do not exist” and “are not owned by DOE.” *Id.*

II. Analysis

The FOIA requires that a search 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. 1981) (emphasis in original). 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).

We contacted NNSA to determine how the search was conducted for this request. In response, NNSA stated that because the request was so verbose, it took some effort to determine exactly what the requestor wanted, which is essentially a list of entities to whom NARAC provided computer models from 2007 to the present. Email from Debbie Harkness, NNSA, to Brooke DuBois, Attorney Advisor, OHA (March 15, 2016). NNSA then asked the program if such a list existed, or if other documents, or collection of documents, existed that would answer the same question. *Id.* NARAC confirmed that there is no list containing this information, and that to provide the information sought in the request, it would have to manually go through data in its computer systems to extract the requested information. *Id.* The FOIA does not require an agency to create documents for the purpose of satisfying a FOIA request. 5 U.S.C. 552; 10 C.F.R. § 1004.4(d)(1)-(2); *see also Tarek Farag*, Case No. TFA-0365 (2010); *Terry M. Apodaca*, Case No. TFA-0319 (2009). Because there were no already existing documents responsive to the request, NNSA appropriately responded that there were no responsive records.

III. Conclusion

Based on the foregoing, we are satisfied that NNSA conducted a search reasonably calculated to uncover the materials sought by the Appellant, and that this search was, therefore, adequate under the FOIA. Thus, we will deny the present Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on March 2, 2016, by Wynship W. Hillier, Case No. FIA-16-0021, 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.

- (3) 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:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Web: ogis.archives.gov
Email: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-7415769
Toll-free: 1-877-684-6448

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: March 18, 2016