

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

In the Matter of Appellant)	
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Filing Date: June 16, 2016)	Case No.: FIA-16-0038
)	
_____)	

Issued: July 11, 2016

Decision and Order

On June 16, 2016, the Appellant appealed a determination issued to him by the Office of Scientific and Technical Information (OSTI) of the Department of Energy (DOE) (Request No. OSTI-2016-00876-F). In that determination, OSTI responded to a request filed by the Appellant under the Freedom of Information Act, 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require OSTI to conduct an additional search for responsive records.

I. Background

The Appellant filed a request with OSTI titled “FOIA Request for Victim and Survivor Disability Claims Forms and Rules.” Letter from Appellant to OSTI (April 18, 2016). In the request, the Appellant sought “any information your databases may provide, so that I may properly file [a] victim and survivor disability claim for benefits and resources.” *Id.* The Appellant provided biographical details, specified the nature of his disability and indicated his belief that he may have been a victim of a human radiation experiment associated with the DOE or its predecessors. *Id.* He also asked that his request serve as an application for disability benefits and that DOE assist him in pursuing a disability claim. *Id.*

On May 10, 2016, the OSTI issued a determination in which it stated that “the documents and assistance you are requesting is not within our jurisdiction or purview.” Determination Letter from Madelyn M. Wilson, OSTI, to Appellant (May 10, 2016) at 1. OSTI explained that its “primary and only mission is to advance science and sustain technological creativity by making Research and Development (R&D) findings available and useful to Department of Energy Researchers and the public.” *Id.* OSTI concluded that, therefore, it did not have any documents responsive to the Appellant’s request. *Id.*

In his Appeal, received by OHA on June 16, 2016, the Appellant asks for “due diligence” so that he might obtain “any and all information on filing a claim for victim and survivor benefits.” Appeal from Appellant to OHA (May 26, 2016). He refers to the history of human radiation experiments conducted in association with the DOE and its predecessor agencies, suggests a belief that he was a victim and again requests help filing a claim for benefits. *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.” *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). The standard of reasonableness we apply “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., Ralph Sletager*, Case No. FIA-14-0030 (2014).

In the instant matter, the Appellant’s request refers to the role of the DOE and its predecessor agencies, in past decades, in supporting radiation experiments involving human subjects.¹ OSTI understood the Appellant’s request as seeking records indicating how a victim of such experiments would file a claim for benefits with the DOE. Memorandum of Telephone Conversation between Madelyn Wilson, OSTI, and Gregory Krauss, OHA (June 20, 2016). OSTI emphasized to us that its mission is to collect scientific and technical information associated with research performed by the DOE and that it is not involved in administering any disability programs. *Id.* OSTI nevertheless tried searching for relevant records in three of its online databases: (1) Sci-Tech Connect, (2) Science Research Connection and (3) E-Link. Email from Madelyn Wilson, OSTI, to Gregory Krauss, OHA (June 23, 2016). In each database, OSTI conducted searches using the phrases “victim and survivor disability claim” and “victim and survivor disability.” *Id.* OSTI did not locate any responsive documents.

Given that OSTI does not administer any disability programs or purposely collect records on such programs, we find that OSTI’s search for records on that topic was reasonably calculated to uncover all relevant documents. However, we also verified with the Office of Health and Safety (OHS), a DOE organization with knowledge of the DOE’s efforts to uncover the history of human radiation experiments, that the DOE does not have a compensation program for victims of those experiments. Memorandum of Telephone Conversation between Gregory Lewis, OHS, and Gregory Krauss, OHA (July 5, 2016). We further confirmed that no such program exists by consulting with the Office of Information Resources, which administers the FOIA program at DOE headquarters, and with the Nuclear Testing Archive, which maintains an archive that includes documents on human radiation experiments. *See* Memorandum of Telephone Conversation between Alexander Morris, OIR, and Gregory Krauss, OHA (June 29, 2016); Memorandum of

¹ This history is outlined in two detailed reports issued by DOE in the 1990s. *See Human Radiation Experiments: The Department of Energy Roadmap to the Story and the Records* (February 1995); *Human Radiation Experiments Associated with the U.S. Department of Energy and Its Predecessors* (July 1995).

Telephone Conversation between Martha DeMarre, Nuclear Testing Archive, and Gregory Krauss, OHA (June 29, 2016) (DeMarre Memo).

Additionally, in reviewing this Appeal, we considered whether OSTI's interpretation of the scope of the Appellant's request was sufficiently broad. Although the Appellant labeled his request as a "FOIA Request for Victim and Survivor Disability Claims Forms and Rules," he also sought "any information" in OSTI's databases that could assist him in filing a claim as a victim of a human radiation experiment. OSTI searched for records concerning procedures for filing disability claims, but it did not search for information on human radiation experiments at the locations specified by the Appellant or for information that could indicate whether the Appellant could have been involved in any such experiments. We are aware that many of the records that the DOE maintains on human radiation experiments, including copies of the records in the Nuclear Testing Archive, are available in the DOE's OpenNet online database, which is a database hosted by OSTI.¹ *See* DeMarre Memo.

Nevertheless, we believe that OSTI's interpretation of the request was reasonable. In 2013, the Appellant filed FOIA requests with OSTI for information regarding human radiation experiments at locations where he believes he may have been a subject. OSTI responded by providing hard copies of the DOE's major reports on human radiation experiments and directing the Appellant to online resources, including the human radiation experiment documents that are available in OpenNet. *See* Determination Letter from Madelyn Wilson, OSTI, to Appellant (October 21, 2013); Determination Letter from Madelyn Wilson, OSTI, to Appellant (December 2, 2013). Since OSTI has already provided the Appellant with records pertaining to human radiation experiments, it was reasonable to assume that the Appellant was not requesting a search on the same topic again. Finally, in light of the Appellant's request in his Appeal for "any and all information on filing a claim for victim and survivor benefits," we are further persuaded that OSTI correctly interpreted the scope of the request.

III. Conclusion

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

It Is Therefore Ordered That:

- (1) The Appeal filed on June 16, 2016, by the Appellant, Case No. FIA-16-0038, 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.

¹ The OpenNet database is available at <https://www.osti.gov/opennet/>. Information on human radiation experiments associated with the DOE and its predecessors is available at <https://www.osti.gov/opennet/spotlight.jsp>.

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 the right to pursue litigation. FOIA requesters 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: 202-741-5769
Toll-free: 1-877-684-6448

Poli A. Marmolejos
Director
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Date: July 11, 2016