

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

In the Matter of Jenna Danbrowney	)		
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Filing Date: August 15, 2017	)	Case No.:	FIA-17-0028
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Issued: September 12, 2017

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**Decision and Order**

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On August 15, 2017, Jenna Danbrowney (Appellant) appealed a determination issued by the Department of Energy’s (DOE) Office of Public Information (OPI) on August 2, 2017 (Request No. HQ-2017-01418-F). In that determination, OPI responded, on behalf of the Office of Environmental Management (EM), to a request filed by the Appellant 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 the adequacy of a search for responsive records conducted by EM. As explained below, we have determined that the Appeal should be denied.

**I. Background**

On July 11, 2017, the Appellant filed a FOIA request at DOE headquarters for records regarding the installation or removal of insulation at the Pantex Plant (“Pantex”), a site of the National Nuclear Security Administration (NNSA). Request from Appellant to DOE (July 11, 2017) (“OPI Request”). On the same date, the Appellant filed a nearly identical FOIA request with NNSA. Request from Appellant to NNSA (July 11, 2017) (“NNSA Request”). In the requests, she specifically sought records regarding: (1) the types or amounts of insulation installed at Pantex; (2) the installation or removal of any form of insulation at Pantex; (3) work performed by any insulation contractor at Pantex; and (4) the installation of any asbestos-containing insulation at Pantex. The Appellant limited the request to records regarding insulation installed on or around certain types of equipment at Pantex.<sup>1</sup> OPI Request at 1-3; NNSA Request at 1-3.

Upon receiving the request, OPI asked EM to conduct a search for responsive records. On August 2, 2017, OPI issued a determination on EM’s behalf. Determination Letter from Alexander C. Morris, FOIA Officer, OPI to Appellant (August 2, 2017). In that determination, OPI stated that EM had not located any responsive documents. *Id.* at 1.

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<sup>1</sup> The requester sought only records regarding insulation at the Pantex Plant installed on or around piping, valves, or pumps, or around boilers, feed water heaters, turbines, and associated equipment. OPI Request at 1-3.

The Appellant filed an appeal challenging the adequacy of EM's search. Appeal from Appellant to Director, Office of Hearings and Appeals (August 14, 2017) ("Appeal"). She attached two documents to the Appeal. The first document is a preliminary environmental survey from September 1987 conducted by the Office of Environmental Audit, a DOE headquarters office that no longer exists. DOE, Office of Environmental Audit, *Environmental Survey Preliminary Report, Pantex Facility* (September 1987) ("September 1987 Report"). The second document is a report on environmental issues at the Pantex Plant prepared by a Pantex environmental office in 1994. Battelle Pantex, Environmental Protection Department, *1993 Environmental Report for Pantex Plant* (June 1994) ("June 1994 Report"). The documents contain information regarding efforts to remove asbestos from the Pantex Plant.<sup>2</sup> The Appellant argues that these reports are evidence that DOE possesses additional responsive records. Appeal at 1.

## 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., *Ralph E. Sletager*, OHA Case No. FIA-14-0030 (2014).

As an initial matter, we note that OPI's determination pertains only to EM's search for responsive records and not to NNSA's search. Indeed, NNSA indicated to us that it is continuing to process the Appellant's FOIA request. Email from Jane Summerson, NNSA, to Gregory Krauss, OHA (August 28, 2017). It is unclear whether the Appellant is challenging only EM's search, or whether the Appellant believes that OPI made a broad finding that DOE, including NNSA, has no responsive records. Regardless, given that OPI only made a determination with respect to records held by EM, this decision is limited to that issue only.

When we contacted EM, officials indicated that Pantex is an NNSA site and is not part of the EM portfolio. Email from Jillian Monahan, EM, to Gregory Krauss, OHA (August 18, 2017) ("Monahan Email"). Consequently, EM has had only limited involvement in environmental remediation at Pantex. *Id.* The area of EM where employees would be most likely to have any responsive records is EM-3, which oversees EM's field work. Memorandum of Telephone Conversation between Jillian Monahan, EM, and Gregory Krauss, OHA (August 18, 2017). However, a senior advisor in EM-3, who was consulted during this appeal, could not identify any current EM-3 employee who is likely to possess responsive records. Monahan Email.

EM also has a records division which maintains physical and electronic records. EM's physical records are stored in a records room as well as in an off-site location. The boxes in the records

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<sup>2</sup> The September 1987 Report provides a brief description of where asbestos is found at the Pantex Plant and of asbestos removal efforts. September 1987 Report at 4-31; 4-34. The report indicates that DOE planned to conduct a review of asbestos-related issues at the Pantex Plant. *Id.* at B-19. The June 1994 Report states that Pantex completed an Asbestos Management Plan in 1993. June 1994 Report at 2-10.

room are labeled, although there is no finding aid describing the contents of each box. Memorandum of Telephone Conversation between Jillian Monahan, EM, Ann Sands, EM, and Gregory Krauss, OHA (August 21, 2017) (“August 21 Memo”) at 1. In response to the request, EM’s records manager reviewed the outside of the boxes for the word “Pantex” and located no such boxes. *Id.* The same official also reviewed all the records transmittal forms that describe all records sent to the off-site storage location and found no such forms mentioning Pantex. Memorandum of Telephone Conversation between Ann Sands, EM, Gregory Krauss, OHA, *et al.* (August 31, 2017) (“August 31 Memo”) at 1.<sup>3</sup>

EM’s records division stores electronic records of executive correspondence in a database called E-Stars. Memorandum of Telephone Conversation between Ann Sands, EM, and Gregory Krauss, OHA (August 16, 2017) at 1. Electronic records stored in E-Stars date to 2000. August 31 Memo at 1. Another database, called the Content Server, contains all E-Stars records, as well as some additional electronic records that are not in E-Stars.<sup>4</sup> August 21 Memo at 1. After receiving the request, EM’s records manager performed electronic searches in the Content Server using the terms “Pantex,” “boiler,” and “installation.” Freedom of Information Act Search Certification Form, Request No. HQ-2017-01418-F (July 13, 2017). The records manager searched the term “Pantex” individually as well as in combination with the other two terms. August 31 Memo at 1. The searches were not full-text searches, but searches of subject matter descriptions of each record.<sup>5</sup> August 21 Memo at 1. These searches retrieved dozens of records, but none were found to be responsive. *Id.*

On appeal, EM conducted some additional electronic searches in its Content Server. EM searched for the word “Pantex” in combination with terms including “insulation,” “asbestos,” and “feed water heaters.”<sup>6</sup> Email from Ann Sands, EM, to Gregory Krauss (August 17, 2017) (“Sands Email”); August 21 Memo at 1. EM did not retrieve any responsive records. Sands Email; August 21 Memo at 1. EM also performed electronic searches for the reports that the Appellant provided on appeal, using search terms such as the document numbers for the reports. Email from Jillian Monahan, EM, to Gregory Krauss, OHA (August 30, 2017). EM was unable to locate those reports. *Id.* Further, the EM-3 official who was consulted during this appeal stated that EM would not have produced either of those reports.<sup>7</sup> Monahan Email.

Altogether, taking into account that EM has had only limited involvement with Pantex, as well as the additional electronic searches performed on appeal, we find that EM conducted a search

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<sup>3</sup> EM also indicated that all records stored in the off-site location are accessible to EM in electronic format. August 31 Memo at 1. Accordingly, EM’s electronic searches, described *infra*, should have been able to locate any responsive records located off site.

<sup>4</sup> Those additional records are not limited by any specific date. August 21 Memo at 1. EM officials are able to upload a document from any time period into the Content server. *Id.*

<sup>5</sup> EM described a “subject matter description” as a one or two line description of a record. August 31 Memo at 1.

<sup>6</sup> Generally, all searches conducted on appeal were searches of subject matter descriptions, although EM conducted one full-text search combining the terms “Pantex” and “asbestos.” August 21 Memo at 1; August 31 Memo at 1.

<sup>7</sup> The September 1987 Report was completed prior to EM’s formation in 1989. Monahan Email. As noted, the June 1994 report was produced by environmental organization at Pantex.

reasonably calculated to uncover the materials sought by the Appellant. Consequently, we find that EM's search was adequate under the FOIA, and we deny the present Appeal.<sup>8</sup>

### **III. Order**

It is hereby ordered that the Appeal filed on August 15, 2017, by Jenna Danbrowney, Case No. FIA-17-0028, is denied.

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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Toll-free: 1-877-684-6448

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: September 12, 2017

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<sup>8</sup> Our finding is limited only to the search performed by EM. As noted, NNSA has yet to respond to the NNSA Request. Further, this decision does not reach whether OPI should assign the request to any other DOE organization.