



Department of Energy
Washington, DC 20585

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Government Accountability Project)

Filing Date: October 12, 2017)

Case No.: FIA-17-0036)

Issued: October 30, 2017

Decision and Order

On October 12, 2017, Mr. Zachary Kopplin of the Government Accountability Project (Appellant) appealed a determination issued by the Department of Energy’s (DOE) Office of Public Information (OPI) on September 15, 2017 (Request No. HQ-2017-001623-F). In that determination, OPI responded to a request that the Appellant 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 the adequacy of DOE’s search for responsive documents. As explained below, we have determined that the Appeal should be denied.

I. Background

The Appellant filed a FOIA request for “Secretary Perry’s emails for any and all emails with EPA Director Scott Pruitt.” Determination Letter, September 15, 2017, at 1. In a determination issued on September 15, 2017, the DOE informed the Appellant that it had searched the appropriate office and that it had located no records responsive to the request. *Id.* On October 12, 2017, the Appellant appealed this determination. FOIA Appeal from Zachary Kopplin, Government Accountability Project, to OHA Filings (October 12, 2017). In his Appeal, the Appellant challenges the adequacy of the DOE’s search. Specifically, he states that he appeals “the integrity of the search” and “trust[s] that upon re-consideration, you will reverse the decision denying me access to the material and grant my original request.” *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., *Ralph E. Sletager*, OHA Case No. FIA-14-0030 (2014).*

We contacted DOE’s OPI to determine how the search was conducted in this case. In their response, OPI informed us that based on the subject matter and the specific nature of the request, the request was assigned to the Office of the Executive Secretariat (ES) to conduct a search of files for responsive documents. Record of Telephone Conversation between Anjelica Ruda, OPI, and Kimberly Jenkins-Chapman, Attorney-Advisor, Office of Hearings and Appeals, OHA (October 25, 2017). ES conducted both manual and electronic searches of Secretary Perry’s email files after determining that this is where responsive records would likely be stored. *Id.* For the electronic search, the key word search terms used were “Scott Pruitt.” *Id.* No responsive records were located as a result of both of these searches. Based on the foregoing, we find that the DOE conducted a search reasonably calculated to uncover the records sought by the Appellant, and that the search was therefore adequate. Thus, we will deny the present Appeal.

III. Order

It is therefore ordered that the Appeal filed on October 12, 2017, by the Government Accountability Project, Case No. FIA-17-0036, is hereby 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.

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Date: OCT 30 2017