

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

In the Matter of Crain, Caton & James)
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Filing Date: November 20, 2017) Case No.: FIA-17-0046
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Issued: November 27

Decision and Order

On November 20, 2017, the law firm of Crain, Caton & James, P.C. (Appellant) filed an Appeal from a determination issued by the Department of Energy’s (DOE) Office of Fossil Energy (FE). In that determination, FE 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. FE stated that it had no responsive documents. The Appellant challenged FE’s search. This Appeal, if granted, would require an additional search for responsive information.

I. Background

On September 21, 2017, the Appellant filed a FOIA request directly with the FE Office of Information Technology. FOIA Request (September 21, 2017). In the request, the Appellant sought “[a]ll communications generated on April 22, 2016, or within twelve (12) months prior to that date, regarding commercial arrangements for use of the Department of Energy’s 40” pipelines from Bryan Mound, Texas to Texas City, Texas.” *Id.* In particular, the Appellant sought, but did not limit the request to, the communications between DOE or the Strategic Petroleum Reserve Project Management Office (SPR) and the following companies and/or their affiliates: Exxon Mobil Pipeline Company, Genesis Energy, L.P., Enterprise Products Company, Seaway Crude Pipeline Company LLC, and Enbridge Inc. *Id.* In response, FE conducted a search of the files in its office and did not locate any responsive documents. Email from FE to Appellant (October 12, 2017).

On November 20, 2017, the Office of Hearings and Appeals (OHA) received the Appellant’s challenge to FE’s determination. FOIA Appeal (November 17, 2017). In the Appeal, the Appellant contends that “[i]t is a matter of fact that Genesis Energy, LP has a connection to the pipeline in question.” The Appellant indicated that it received a connection agreement through a previous FOIA request and argues that FE’s “assertion that there is no communication of record in the one-year period prior to or contemporaneous with that contract is difficult to comprehend.” *Id.* at 2.

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).*

FE provided our office with information regarding the search it conducted to process the Appellant’s FOIA request. The FE headquarters’ office, located in Washington, D.C., is the FE program office, and SPR, located in New Orleans, Louisiana, is a field office. FE indicated that any communication between the companies listed in the FOIA request and DOE or SPR would not be housed at its program office, but instead would be housed at the field office because the field office communicates directly with those companies. Telephone Memorandum (November 20, 2017). Accordingly, the FE program office felt certain that it would not have any responsive records. *Id.* Nonetheless, FE conducted a search of its database using the terms “40[-inch] pipeline, Exxon Mobil, Genesis, and the other companies listed in the FOIA request.” *Id.* An FE manager also explained that he conducted a search of his emails using the company names, but found no communications between his office and the companies listed in the FOIA request. *Id.* FE also provided email correspondence with a second FE manager indicating that he did not find responsive records. FE Email Chain (October 2-12, 2017).

Although FE conducted a search of its program office, the Appellant’s FOIA request was never forwarded to SPR as the result of a divergence from the typical FOIA processing system at DOE. Telephone Memorandum (November 20, 2017). Customarily, a FOIA request at the DOE headquarters level originates with the Office of Public Information (OPI). OPI assigns the request a number and dispatches it to the appropriate office or offices that are likely to house the relevant responsive records. Upon receiving responses from each identified office, OPI then issues a determination letter on behalf of DOE as a whole.

In this case, SPR had processed a prior FOIA request from the Appellant. Telephone Memorandum (November 20, 2017). The Appellant informed SPR that it would be submitting a second, revised FOIA request. *Id.* SPR felt this request should be sent directly to the FE program office and directed the Appellant to do so, providing an email address and contact information for FE’s Office of Information Technology. *Id.* The Appellant did as directed; however, FE misunderstood the origins of this request and responded directly to the Appellant solely on behalf of the FE program office. *Id.* As such, SPR never received this second, revised request and was never given the opportunity to search for responsive records. *Id.*

Based on the foregoing, we cannot find that a search reasonably calculated to uncover all relevant documents within DOE was conducted. As an initial matter, we conclude that FE conducted an adequate search to discover any responsive records that may exist within the FE program office. The FE program office searched its database and the emails of two FE managers using relevant search terms, including

* Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at www.energy.gov/oha.

the company names listed in the FOIA request. Subsequently, FE determined that it did not have any documents that were responsive to the Appellant's request. However, as a result of some confusion arising from the origins of the request, SPR, the office more likely to have communications with the companies listed in the Appellant's FOIA request, did not receive the request. Accordingly, we find that an adequate search was not conducted to find all departmental records responsive to the Appellant's request. Since the FE program office has already conducted an adequate search of its records, we have referred the matter to SPR for further processing. Telephone Memorandum (November 20, 2017).

III. Conclusion

For the reasons stated above, we conclude that while the FE program office conducted an adequate search for responsive records, an adequate search was not conducted to discover responsive records within DOE. We will therefore grant the present Appeal and refer the matter to SPR for further processing.

IV. Order

It is hereby ordered that the Appeal filed on November 20, 2017, by Crain, Caton & James, Case No. FIA-17-0046, is granted.

This matter is hereby referred to the Department of Energy's Strategic Petroleum Reserve Project Management Office, which shall issue a new determination in accordance with the instructions set forth in the above Decision.

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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Director
Office of Hearings and Appeals

Date: November 27