

United States Department of Energy  
Office of Hearings and Appeals

In the Matter of Gregory E. Kucera, III )  
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Filing Date: July 8, 2019 ) Case No.: FIA-19-0025  
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Issued: July 12, 2019

**Decision and Order**

On July 8, 2019, Mr. Gregory E. Kucera, III (Appellant) appealed a determination letter (Determination Letter) issued by the United States Department of Energy’s (DOE) Office of Public Information (OPI) concerning Request No. HQ-2019-00679-F.<sup>1</sup> Appellant’s request sought information regarding his participation in an alleged counterintelligence operation. On June 27, 2019, OPI issued the Determination Letter in which it indicated that it had not located any documents responsive to Appellant’s request. Appellant appealed the adequacy of OPI’s search, and requested confirmation of the existence of relevant personnel files. As explained below, we conclude that OPI’s search was adequate and deny the appeal.

**I. Background**

On March 31, 2019, Appellant submitted a FOIA request for “information regarding [his] participation in a warfare related counterintelligence operation.” FOIA Request at 1 (Mar. 31, 2019). Appellant’s FOIA request made clear that he considered himself an unwilling participant in the alleged counterintelligence operation, and that he had initiated legal proceedings to remedy the alleged wrongdoing by various federal agencies. *Id.* at 1–3. The Appellant further asserted that the counterintelligence operation had been ongoing for nearly fifteen years. *Id.* at 3–4.

OPI referred Appellant’s FOIA request to DOE’s Office of Intelligence and Counterintelligence (IN) to conduct a search for responsive records. IN performed a keyword search of its archived electronic records for any information related to the Appellant’s participation in a counterintelligence operation, but failed to locate any responsive records. FOIA Search Certification Form (Apr. 17, 2019).

On June 27, 2019, OPI issued a determination letter in which it indicated that its search had not identified any responsive documents. Determination Letter at 1. In his Appeal, Appellant reiterated

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<sup>1</sup> OHA initially designated this proceeding as case number PAA-19-0001, the PAA prefix of which indicated that the case concerned an appeal under the Privacy Act. OHA changed the case number to FIA-19-0025, indicating that the case concerned an appeal under the FOIA, when OHA learned that Appellant’s underlying request did not include all of the elements of a Privacy Act request and that OPI’s Determination Letter pertained solely to the FOIA.

that he believed that he was part of a counterintelligence operation, and requested confirmation of “the existence of relevant personnel/HR related files.” Appeal at 1. The remainder of the Appeal requested relief outside of the scope of the FOIA and summarized Appellant’s beliefs concerning the nature of the alleged program, the adverse effects of the alleged program on his wellbeing, and his efforts to obtain documentation of the alleged program.

## II. Analysis

“Under the FOIA, an agency is obliged to make available to the public records that are reasonably described in a written request, if not exempt from disclosure.” *Kidder v. FBI*, 517 F. Supp. 2d 17, 23 (D.D.C. 2007); 5 U.S.C. §§ 552(a)(3)(A),(b). “A request reasonably describes records if the agency is able to determine precisely what records are being requested.” *Tax Analysts v. IRS*, 117 F.3d 607, 610 (D.C.Cir.1997) (internal quotation marks and citation omitted).

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*, OHA Case No. FIA-14-0030 (2014).

We find that OPI’s decision to refer Appellant’s request for records of a secret counterintelligence operation to IN was the only logical course of action. Since Appellant asserted that he was involuntarily inducted into the alleged counterintelligence program, and was not hired by DOE to perform counterintelligence operations, there exists no other location in which one could reasonably expect to uncover responsive records. Likewise, we find IN’s approach to searching for records reasonable. Appellant’s request exclusively sought records pertaining to himself, which, if they existed, would date back as far as fifteen years. IN’s decision to conduct a keyword search of its archived electronic records for information pertaining to the Appellant constitutes the only reasonable way to attempt to locate the information requested by Appellant.

The Appeal also requested various forms of relief, including “visitation rights to Sandia[] and . . . a relevant security clearance . . .” among other things. Appeal at 1. As these requested remedies are beyond the scope of the FOIA and OHA’s jurisdiction, we will not consider them.

## III. Order

It is hereby ordered that the appeal filed by Gregory E. Kucera, III on July 8, 2019, No. FIA-19-0025, 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 the right to pursue litigation. OGIS may be contacted in any of the following ways:

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