

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

In the Matter of: Julie Reddick)
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Filing Date: June 22, 2020) Case No.: FIA-20-0037
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Issued: July 10, 2020

Decision and Order

On June 22, 2020, Julie Reddick (Appellant) appealed a Determination Letter issued to her from the Department of Energy’s (DOE) Office of Public Information (OPI) regarding Request No. HQ-2020-00477F. In that determination, OPI responded to a request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. In its response, OPI stated that the requested information was publicly available. The Appellant challenged the response, stating that the identified public information was not responsive to her request. In this Decision, we deny the appeal.

I. BACKGROUND

On February 9, 2020, Appellant submitted a FOIA request to DOE requesting “a copy of DOE’s ‘Separate Report’ to Congress of the balance of information required according to the Good Accounting Obligation in Government Act (PL 115-414)” which was to accompany DOE’s Fiscal Year 2020 Budget Justification. The requested information had been referenced in a report submitted to Congress, which stated, “DOE is in this FY 2020 Budget Request listing the applicable GAO and OIG recommendations and will submit to Congress at a later date a separate report that provides details of the status of the recommendations listed here.”

OPI referred the search to DOE’s Office of the Chief Financial Officer (CF), which began its search on March 16, 2020. In response to the request, CF provided OPI with a link to the publicly available U.S. Department of Energy Fiscal Year 2021 Budget Justification GAO-IG Act Required Reporting. On June 12, 2020, OPI issued a response letter to Appellant stating that the information she requested was publicly available and providing a link to the Fiscal Year 2021 document. In an email to the OPI analyst who had processed her FOIA request, Appellant questioned OPI’s response, pointing out that the information was wholly unresponsive to her original request. OPI inquired with CF about its search. CF informed OPI that the GAO-IG Act reporting requirement was created in early 2019 and the GAO-IG Act required report was first satisfied for Fiscal Year 2020. OPI considered sending an updated response letter indicating that no responsive documents had been found, but Appellant filed the present appeal before that letter was sent.

II. ANALYSIS

An informed citizenry is a crucial element of a functioning democracy. The FOIA is intended to ensure such a citizenry, which is “needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). It is incumbent upon agencies to conduct a search that is “reasonably calculated to discover the requested documents...” *SafeCard Servs., Inc. v. Sec. and Exch. Comm’n*, 288 U.S. App. D.C. 324, 926 F.2d 1197, 1201 (1991). *See also Heffernan v. Azar*, 317 F. Supp. 3d 94, 110 (D.D.C. 2018).

Requesters may appeal the adequacy of the search an agency made in satisfying the request. In these appeals, the factual question raised is “whether the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document extant.” *SafeCard Servs., Inc. v. Sec. and Exch. Comm’n*, 288 U.S. App. D.C. 324, 926 F.2d 1197, 1201 (1991). *See also Heffernan v. Azar*, 317 F. Supp. 3d 94, 110 (D.D.C. 2018). In responding to a FOIA request, an agency need not conduct an exhaustive search of each of its record systems; rather, it need only conduct a reasonable search of “all systems ‘that are likely to turn up the information requested.’” *Ryan v. FBI*, 113 F. Supp. 3d 356, 362 (D.D.C. 2015) (citing *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). The standard of reasonableness depends on the facts of each case. *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 497 (D.D.C. 2017) (citing *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). A lack of responsive records does not indicate that a search was unreasonable. Indeed, a search’s adequacy “is determined not by the fruits of the search, but by the appropriateness of [its] methods.” *Hodge v. FBI*, 703 F.3d 575, 579 (D.C. Cir. 2013) (citing *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)) (internal quotation marks omitted). We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., American Oversight*, OHA Case No. FIA-19-0010 (2019).

The FOIA does not specify the method of search, only that it must be reasonable. *Toensing v. United States DOJ*, 890 F. Supp. 2d 121, 144 (D.D.C. 2012). The personal knowledge of agency employees may limit the scope or depth of a search where such personal knowledge reasonably leads the searcher to believe that such scope and depth are reasonably calculated to discover requested records. Though an agency “cannot fail to search at all based upon alleged personal knowledge,” such personal knowledge may guide a search such that a more limited scope is reasonable. *James Madison Project v. DOJ*, 267 F. Supp. 3d 154, 161 (D.D.C. 2017).

After conducting a search for responsive documents under the FOIA, the statute requires that an agency provide a requester with a written determination notifying the requester of the results of that search and, if applicable, of the agency’s intentions to withhold any of the responsive information under one or more of the nine statutory exemptions to the FOIA. 5 U.S.C. § 552(a)(6)(A)(i). The statute further requires that the agency provide the requester with an opportunity to appeal any adverse determination. *Id.*

The written determination letter serves to inform the requester of the results of the agency’s search for responsive documents and of any withholdings that the agency intends to make. In doing so, the determination letter allows the requester to decide whether the agency’s response to its request

was adequate and proper and provides this office with a record upon which to base its consideration of an administrative appeal.

As an initial matter, upon inquiry after this appeal was filed, CF informed the OHA that it did not provide a “separate report” to Congress relevant to the GAO-IG Act reporting, as referenced in the FY 2020 Congressional Budget Request, because such a report was not requested by Congress. CFO clarified the language regarding GAO-IG Act reporting for the Fiscal Year 2021 Budget Justification to state that a “separate report” for the GAO-IG Act Reporting Requirement would be provided only upon request by Congress. For both the FY 2020 and FY 2021 Congressional Budget Request, a separate report has not yet been generated, but would be if requested by Congress.

In light of the facts described above, the results of OPI’s search may not have been adequately conveyed in the determination letter. OPI’s determination letter inadequately described the reason why the requested documents were not sent to Appellant; however, the additional information obtained from CF after this appeal was filed indicates that an adequate search was in fact performed. Despite knowledge that the specific document requested did not exist, CF attempted to find other documents that may have been potentially responsive to Appellant’s request. The only document located that could have been considered responsive was the public document from the 2021 Budget Justification, the link for which was transmitted to Appellant even though the FOIA does not impose a duty on agencies to transmit publicly available information in response to FOIA requests.

Given the facts described above, we find that DOE performed an adequate search for the requested records.

III. ORDER

It is hereby ordered that the Appeal filed on June 22, 2020, by Julie Reddick, No. FIA-20-0037, 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 one’s right to pursue litigation. OGIS may be contacted 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: <https://www.archives.gov/ogis> Email: ogis@nara.gov

Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

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