

United States Department of Energy  
Office of Hearings and Appeals

In the Matter of Larry W. Long )  
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Filing Date: November 20, 2012 ) Case No.: FIA-12-0073  
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Issued: December 12, 2012

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**Decision and Order**  
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On November 20, 2012, Larry W. Long (“Appellant”) filed an Appeal from a determination issued to him on November 1, 2012, by the Department of Energy (DOE) Office of Information Resources (OIR) (FOIA Request Number HQ-2012-01665-F). In its determination, the OIR responded to the Appellant’s request for information filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. Specifically, the Appellant contends that there should be documents that are responsive to its FOIA request, which the OIR has not produced. Thus, this Appeal, if granted, would require the OIR to conduct another search for documents that the Appellant requested.

**I. Background**

On June 13, 2012, the Appellant submitted a FOIA request to the Department of Energy’s Oak Ridge Office (ORO) with seven separate requests for documents. *See* FOIA request from the Appellant to Amy Rothrock, FOIA/PA Officer, ORO (June 13, 2012). On July 24, 2012, the ORO responded to the Appellant’s FOIA request, and notified him that Item 2 of his request was forwarded to the OIR to locate responsive documents.<sup>1</sup> Determination Letter from Amy L. Rothrock, ORO, to the Appellant (July 24, 2012). It denied the Appellant’s request for the remaining items, stating that the DOE did not have possession of the requested documents as they are contractor-owned records. *Id.* Our Office denied the Appellant’s appeal of the ORO’s determination on September 7, 2012. *Larry W. Long*, Case No. FIA-12-0046 (2012).<sup>2</sup>

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<sup>1</sup> Stating that “the Mercer or AON/Hewitt Studies pertain to DOE Headquarters procurements in Washington DC. Therefore, by copy of this letter, we are forwarding your request for item [2] to the DOE FOIA Officer, Office of Information Resources, for a search and direct response to you.”

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, are available on the OHA website located at <http://energy.gov/oha/office-hearings-and-appeals>.

Item 2 of the Appellant's request seeks:

AON/Hewitt Study results and analysis of benefits offered by the contractor to incumbent (grandfathered) and non-incumbent (non-grandfathered) employees conducted in 2012 and all documentation regarding the 15 comparator companies used in the 2012 Study including any comparisons, evaluations and justifications to modify the list from the most recent study conducted by the Bechtel Jacobs Company LLC (BJC). Documentation of recommendations and proposed revisions to UCOR's welfare benefits programs, including the Corrective Action Plan Methodology and all written considerations of potential cost savings/avoidance, justification for ability to attract/retain talent, comparison to plans in the Oak Ridge Reservation, infrastructure and schedule to make the administrative changes, and justification for the ability to maintain positive employee relations and the effect of benefit changes to the index as presented, rejected, and approved by UCOR and DOE. Documentation shall include letters, meeting handouts, meeting minutes/notes, emails, phone conversation notes, and other documentation relevant to the evaluation, approval, or rejection of the AON/Hewitt Study results and analysis of benefits.

See June 13, 2012 FOIA Request.

On November 1, 2012, the OIR issued a determination on Item 2 of the Appellant's request, informing the Appellant that a search was conducted and that no responsive documents were located. Determination Letter, Alexander C. Morris, FOIA Officer, to the Appellant (Nov. 1, 2012). Subsequently, on November 20, 2012, OHA received the Appellant's Appeal of the OIR's determination, wherein he challenges the adequacy of the search for records responsive to Item 2 of his request.<sup>3</sup>

## 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." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (quoting *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). "[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*, 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., *Project on Government Oversight*, Case No. TFA-0489 (2011).

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<sup>3</sup> The Appellant also challenges the ORO's decision regarding Item 1 of his FOIA request. However, as he already appealed that decision, which was denied by this Office on September 7, 2012, and as more than 30 days has passed since the ORO issued its decision on July 24, 2012, that determination may not be reviewed by our Office. See 10 C.F.R. § 1004.8(a) ("the requester may, within 30 calendar days of its receipt, appeal the determination to the Office of Hearings and Appeals"). Moreover, the Appellant also challenges the OIR's determination on Item 2 based on the ORO's decision that it did not locate responsive documents for Item 1. Thus, our Office will not review the Appellant's arguments pertaining to Item 1. We will only review the Appellant's challenge to the adequacy of the search for documents responsive to Item 2 of his FOIA request.

In response to our inquiries, the Office of Headquarters Procurement Services (OHPS) provided us with additional information to evaluate the reasonableness of its search. Letter from Craig Ashline, OHPS, to Shiwali Patel, OHA (Nov. 28, 2012). The OHPS informed us that the FOIA request was assigned to its Office and that it searched the DOE Strategic Integrated Procurement Enterprise System (STRIPES) by contractor name to locate the contract specialist managing the AON contract. *Id.* In examining the physical contract file and interviewing the contract specialist, the OHPS determined that there were no documents in the contract file responsive to the requested information. *Id.* In addition, the OHPS requested that the Contracting Officer's Representative for the AON contract conduct a search for documents responsive to Item 2, which also did not yield any responsive documents.

Based on the foregoing, we are satisfied that the OHPS has conducted an adequate search for documents that are responsive to the Appellant's FOIA request. As stated above, the standard for agency search procedures is reasonableness, which "does not require absolute exhaustion of the files." *Miller*, 779 F.2d at 1384-85. Here, in searching the physical contract file, interviewing the contract specialist and requesting the Representative for the AON contract to search its records, we conclude that a reasonable search for responsive documents was conducted. Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the Appellant on November 20, 2012, OHA Case Number FIA-12-0073, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 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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Poli A. Marmolejos  
Director  
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Date: December 12, 2012