

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Steven Y. Goldsmith)
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Filing Date: June 18, 2013)
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Case No.: FIA-13-0043

Issued: July 11, 2013

Decision and Order

This Decision concerns an Appeal that Steven Y. Goldsmith filed in response to a determination that was issued to him by the Department of Energy's (DOE) Office of the Chief Information Officer (OCIO). In that determination, OCIO replied to a request for documents that Dr. Goldsmith submitted under the Privacy Act (PA), 5 U.S.C. § 552a, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1008. This Appeal, if granted, would require that we remand this matter to OCIO for another search.

The PA generally requires that each federal agency permit an individual to gain access to information pertaining to him or her which is contained in any system of records maintained by the agency. 5 U.S.C. § 552a(d). The Act defines a "system of records" as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. § 552a(a)(5).

Dr. Goldsmith is an employee of Sandia National Laboratories, and he was granted a security clearance in connection with that employment. In October 2011, he requested a copy of his personnel security file. Five days later, he inquired as to whether the results of a polygraph examination that he had taken would be included. He was informed by the FOIA/PA Office of the General Counsel, National Nuclear Security Administration (NNSA), that they would be included "if you'd like." *See* undated e-mail from Elizabeth Poe, NNSA, to Dr. Goldsmith, Appeal at 4. In response to the request, on May 8, 2013, OCIO released 110 documents to Dr. Goldsmith. Eighteen of those documents were released in part, with personally identifiable information pertaining to third parties withheld. An additional 60 pages of material was identified as having originated with the Office of Personnel Management (OPM), and that portion of Dr. Goldsmith's request was referred to OPM for that Office to respond directly to him.

In his Appeal, Dr. Goldsmith contests the adequacy of the search for responsive documents. Specifically, he contends that records pertaining to (i) his polygraph examination; (ii) his medical and mental health; (iii) his finances and credit history; (iv) interviews with individuals during clearance investigations; and (v) identification of individuals accessing his file, should have been located and provided to him, but were not.

We have often reviewed the adequacy of a search conducted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. A PA request requires only a search of systems of records, rather than a search of all agency records, as is required under the FOIA. Nevertheless, the standard of sufficiency that we demand of a PA search is no less rigorous than that of a FOIA search. Therefore, we will analyze the adequacy of the search conducted by OCIO in the case at hand using principles that we have developed under the FOIA. *See, e.g., Stephen A. Jarvis*, Case No. VFA-0764 (2002).

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Butler, Vines and Babb, P.L.L.C.*, Case No. VFA-0098 (1995). The FOIA, however, 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. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord, Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The fact that the results of a search do not meet the requester's expectations does not necessarily mean that the search was inadequate. Instead, in evaluating the adequacy of a search, our inquiry generally focuses on the scope of the search that was performed. *Information Focus On Energy*, Case No. VFA-0353 (1997).

In order to determine whether the search conducted was adequate, we contacted OCIO, and were referred to the Office of Headquarters Personnel Security (HPS). HPS informed us that it had searched DOE-43, the system of records in which Dr. Goldsmith's and other personnel security files are located. With regard to the five specific categories of records referenced in Dr. Goldsmith's Appeal, we were informed that:

- Polygraph examination details and results were not a part of Dr. Goldsmith's personnel file, and were therefore not located in DOE-43, but are instead in the possession of the DOE's Office of Intelligence and Counterintelligence (IN). Dr. Goldsmith's request has been referred to IN, which will respond directly to Dr. Goldsmith upon completion of their search;
- Medical, mental health and financial records, along with records of interviews with individuals during clearance investigations, would be OPM records, which were referred to that agency for processing and review;
- The documents provided to Dr. Goldsmith included two file review forms, which indicated access to Dr. Goldsmith's file by OPM on October 7 and October 22, 1992. These were the only documents in Dr. Goldsmith's personnel file identifying parties who had accessed the file.

See Memorandum of July 2, 2013, telephone conversation between Theresa Kelley, Office of Headquarters Personnel Security, and Robert B. Palmer, Senior Staff Attorney, Office of Hearings and Appeals. *See also* July 3, 2013 e-mails from Kelly Allen, OCIO, to Mr. Palmer. OCIO's e-mails also indicated that IN may be in possession of Dr. Goldsmith's medical and mental health records and to records identifying parties who had accessed his file.

Given this information, we find that OCIO's search for responsive documents was adequate. The record in this matter indicates that, with the exception of the OPM material, all information in Dr. Goldsmith's personnel security file that pertained to him was released in its entirety. The OPM records are being processed and evaluated by that Office, for a direct response to Dr. Goldsmith. Moreover, OCIO has identified IN as being another Office that might be in possession of the categories of documents identified in his Appeal, and forwarded his request to that Office for a direct response to Dr. Goldsmith. We will therefore deny Dr. Goldsmith's Appeal.

It Is Therefore Ordered That:

(1) The Privacy Act Appeal filed by Steven Y. Goldsmith, OHA Case Number FIA-13-0043, 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. § 552a(g)(1). 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.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: July 11, 2013