

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Shawn R. Hughes)
)
Filing Date: August 29, 2013) Case No.: FIA-13-0057
_____)

Issued: September 10, 2013

Decision and Order

On August 29, 2013, Shawn R. Hughes (Appellant) filed an Appeal from a determination issued to him by the Office of Scientific and Technical Information (OSTI) of the Department of Energy (DOE) (FOIA Request Number OSTI-2013-01396-F). In its determination, OSTI 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 additional documents that are responsive to his FOIA request, which OSTI has not produced, and that his FOIA Request should have also been transferred to another DOE office for processing.

I. Background

On July 23, 2013, the Appellant submitted a FOIA Request seeking "a full, unredacted copy of SC-DR-185-59 'Characteristics and Development Report for the MC-1191 and MC-1291 Firing Sets.'" On July 26, 2013, DOE's Office of Information Resources (OIR) informed the Appellant that it was transferring his FOIA Request to OSTI to conduct a search for responsive documents. *See* Letter from Alexander C. Morris, FOIA Officer, OIR, to Appellant (Jul. 26, 2013). On July 30, 2013, OSTI sent its determination to the Appellant, informing him that it could not locate any responsive documents. *See* Determination Letter from Madelyn M. Wilson, FOIA Officer, OSTI, to Appellant (Jul. 30, 2013).

On August 29, 2013, the Appellant appealed OSTI's determination stating that it did not conduct an adequate search for responsive records. *See* Appeal at 2. The Appellant further argued that OIR should have also transferred his FOIA Request to the Lawrence Livermore National Laboratory (LLNL) and Sandia National Laboratory (SNL) to conduct a search for records. *Id.*

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).*

In response to our inquiries and the Appeal, OIR informed us that it decided to forward the Appellant’s FOIA Request to the National Nuclear Security Administration (NNSA) to conduct a search for responsive documents as NNSA has jurisdiction over LLNL and SNL. See Email from Alexander C. Morris, FOIA Officer, OIR, to Shiwali Patel, Attorney-Examiner, OHA (Sept. 3, 2012). On September 4, 2013, OIR sent a letter to the Appellant informing him that his Request has been forwarded to NNSA for further processing. See Letter from Alexander C. Morris, FOIA Officer, OIR, to Appellant (Sept. 4, 2013). Accordingly, we will proceed to review whether OSTI conducted an adequate search for responsive documents.

In response to our inquiries, OSTI provided us with additional information to evaluate the reasonableness of its search. OSTI informed us that it searched its unclassified, limited access, and classified databases for the requested documents and that the search was conducted by its Records Manager and Classification Officer. See Email from Madelyn Wilson, OSTI Records Manager, to Shiwali Patel, Attorney-Examiner, OHA (Sept. 9, 2013). OSTI also searched “other external sites that announce unclassified Department of Energy (and its predecessors) originated scientific and technical information.” *Id.* The search terms included the specific title of the Appellant’s FOIA Request and the Report Number (SC-DR-185-59). *Id.* However, OSTI could not locate any responsive documents in either hard copy or electronic form. *Id.*

Based on the foregoing, we are satisfied that OSTI 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, based on the description of its search, we conclude that OSTI conducted a reasonable search for responsive records. Moreover, as explained above, OIR has forwarded the Appellant’s FOIA Request to NNSA for further processing, as requested by the Appellant. Accordingly, the Appeal is denied.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the Appellant on August 29, 2013, OHA Case Number FIA-13-0057, 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.

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

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