



2012) (Privacy Act Determination). Mr. Hillier did not appeal the Privacy Act determination to OHA.

In May 2013, Mr. Hillier filed a FOIA request with the NNSA that was nearly identical to his January 2012 Privacy Act request. He again requested any records that the NNSA had about him, provided extensive additional detail to assist in the search, and identified DOE-81 and DOE-84 as possible records systems in which responsive documents may be located. He further explained, however, that he did not intend to limit his request solely to those two systems of records if the NNSA determined that responsive documents might exist elsewhere. Letter from Wynship W. Hillier to NNSA (dated May 14, 2013) (FOIA Request).

On December 12, 2013, NNSA issued a determination in response to the FOIA request. *See* Letter from Elizabeth J. Osheim, Deputy General Counsel, NNSA, to Wynship W. Hillier (December 12, 2013) (FOIA Determination). In the FOIA determination, NNSA stated that the Livermore Field Office (LFO) Counterintelligence Office searched in the two systems of records that Mr. Hillier identified in his request, DOE-81 and DOE-84, and located no responsive documents. *Id.* In addition, Lawrence Livermore National Laboratory (LLNL) performed a search of its records, which yielded two documents. NNSA released the two documents in their entirety to Mr. Hillier. *Id.*

After receiving the FOIA determination and the accompanying documents, Mr. Hillier filed the instant appeal in which he challenged the adequacy of the Agency's search for responsive documents. Letter from Wynship W. Hillier to OHA (received January 10, 2014) (Appeal).

## 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).<sup>2</sup>

As an initial matter, we note that Mr. Hillier requests documents on appeal which he did not include in his initial FOIA request. Specifically, in his appeal, Mr. Hillier appears to request records regarding a group with which he allegedly interacted in the 1980s, the Livermore Action Group (LAG). Appeal at 1. However, Mr. Hillier did not include records regarding LAG in his FOIA request. Mr. Hillier also argues in his appeal that NNSA should have provided him records regarding another individual, a supposed former housemate. *Id.* at 3. Mr. Hillier did not name this individual in his FOIA request. It is clear from our review of the record in this case

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<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on OHA's website located at [www.energy.gov/oha](http://www.energy.gov/oha).

that Mr. Hillier seeks substantially more information on appeal than was included in the scope of the underlying FOIA Request. It is well established that an appellant is not permitted to use the administrative appeal process to expand the scope of a FOIA request. *See, e.g., The Oregonian*, Case No. FIA-13-0065 (2013); *Tarek Farag*, Case No. TFA-0385 (2010); *Cliff Jenkins*, Case No. TFA-0122 (2005); *F.A.C.T.S.*, 26 DOE ¶ 80,132 (Case No. VFA-0227) (1996).<sup>3</sup>

In reviewing this Appeal, we contacted NNSA in order to ascertain the scope of its search for responsive documents. NNSA informed us that LFO searched its counterintelligence files, contained in DOE-81 and DOE-84, using the following search terms: Wynship W. Hillier; Mabon Clearwater Rainsong, another name that Mr. Hillier indicated that he was known by for a brief period; Mr. Hillier's date of birth; and Mr. Hillier's social security number. LFO located no responsive documents. Email from Karen Laney, Information Programs Specialist, NNSA, to Diane DeMoura, Attorney-Advisor, OHA (January 22, 2014). LFO forwarded the request to LLNL for a search. Because Mr. Hillier indicated that he had applied for employment at LLNL in 2004, LLNL searched its employment application database, LHIRE, using the above-referenced terms, but located no responsive documents. *Id.* LLNL also reviewed the electronic records for its badge office "to see if Mr. Hillier had ever visited the site and received a visitor's badge, but no records were found." *Id.*

LLNL also searched for records pertaining to two companies that Mr. Hillier named as previous employers in the 1980s. *Id.* LLNL found no records regarding one of the companies. Regarding the second company, NNSA located non-disclosure agreements and a cooperative research and development agreement (CRADA), but all "were dated post-1992, almost a decade after Mr. Hillier's listed employment dates, so no additional search was conducted of those files." *Id.* LLNL searched for records to determine if the laboratory had ever entered into an agreement with an individual that Mr. Hillier named as his former supervisor, but located no records. *Id.*

Finally, because Mr. Hillier's request indicated that he had been in contact with a LLNL scientist between 2002 and 2005, LLNL asked the scientist to search for responsive records. The scientist located the two documents – email messages – that NNSA ultimately released to Mr. Hillier. *Id.* NNSA noted that the emails were not agency records because they were communications between Mr. Hillier and the scientist concerning an organization with which the scientist was personally involved "that was not affiliated with either LLNL or NNSA." *Id.* However, since neither the scientist nor LLNL's legal counsel had an objection to the documents being released to Mr. Hillier, NNSA included them in its final response. *Id.*

Based on the description above regarding the scope of the search, it appears that NNSA made every effort to locate any record that could possibly be related to Mr. Hillier, even tangentially, going well beyond what would normally be required by the FOIA. Therefore, we find that NNSA performed an exhaustive search of its records that was reasonably calculated to reveal

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<sup>3</sup> However, if Mr. Hillier wishes to request this additional information, he may file a new FOIA request seeking those documents.

records responsive to Mr. Hillier's FOIA request and was, therefore, adequate.<sup>4</sup> Accordingly, we will deny Mr. Hillier's appeal.

It Is Therefore Ordered That:

(1) The Appeal filed on January 10, 2014, by Wynship W. Hillier, OHA Case No. FIA-14-0003, 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.

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 your right to pursue litigation. You may contact OGIS in any of the following ways:

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Toll-free: 1-877-684-6448

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: February 4, 2014

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<sup>4</sup> We further note that, although Mr. Hillier did not timely appeal the Privacy Act determination, we would have also found that search to be adequate had he done so. In assessing the adequacy of a search under the Privacy Act, courts apply the same "adequacy of search" analysis as under the FOIA. *Sussman v. U.S. Dep't of Justice*, 03 Civ. 3618 DRH ETB, 2006 WL 2850608 (E.D.N.Y. Sept. 30, 2006); *see Shores v. FBI*, 185 F. Supp. 2d 77, 82 (D.D.C. 2002); *cf. Sneed v. U.S. Dep't of Labor*, 14 Fed. Appx. 343, 345 (6th Cir. 2001). In this case, as noted above, NNSA's LSO and LLNL searched the appropriate systems of records, using the search terms most likely to produce records pertaining to Mr. Hillier. *See* Email from Karen Laney, Information Programs Specialist, NNSA, to Diane DeMoura, Attorney-Advisor, OHA (January 22, 2014); *see also* Privacy Act Determination. Despite the fact that the search yielded no responsive documents, it was reasonably calculated to reveal records responsive to the request, and was, therefore, adequate.