

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Emily Meredith)
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Filing Date: January 23, 2014) Case No.: FIA-14-0007
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Issued: February 14, 2013

Decision and Order

On January 23, 2014, Emily Meredith (“Appellant”) filed an Appeal from a determination issued to her on December 31, 2013, by the National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) (FOIA Request Number FOIA 14-00025-H). In its determination, NNSA 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 her FOIA request, which NNSA has not produced. Thus, this Appeal, if granted, would require NNSA to conduct another search for the documents that the Appellant requested.

I. Background

On October 18, 2013, the Appellant submitted a FOIA Request seeking the following documents: 1) DOE’s most recent policy on uranium enrichment services available in the U.S and 2) Documents that set forward [sic] a determination made by the DOE as to whether the U.S. Government has accepted the interpretation by the Urenco parties to the Washington Agreement regarding the peaceful use clause of that agreement. *See* Freedom of Information Act Request (October 13, 2013). In her FOIA Request, the Appellant indicated that “similar information has been previously set forward in a document titled National Security and Nonproliferation Requirements for Uranium Enrichment Services.” *Id.* On December 31, 2013, NNSA issued its determination, stating that Appellant’s request was forwarded to the Office of Defense Nuclear Nonproliferation (NA-20), the Office of Defense Programs (NA-10), and the Office of Nuclear Materials (NA-73). NNSA further stated that after conducting a search, two documents were located, a letter from Secretary Chu and page 376 of the FY 2013 Congressional Budget for NNSA. It stated that both of these documents were responsive to Item 1 of Appellant’s request and released them to the Appellant in their entirety. NNSA stated that program offices had no documents responsive to Item 2 of Appellant’s request, adding that the U.S. Government policy

is stated in the documents provided. See Determination Letter from Elizabeth L. Osheim, Deputy General Counsel, NNSA, to Emily Meredith (December 31, 2013).

The Appellant claims that there should be responsive records, challenging the adequacy of the search for documents.

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 its Determination Letter, NNSA stated that the Appellant’s request was forwarded to three separate program offices to search for responsive documents. According to NNSA, two of the offices determined that they did not possess responsive documents and forwarded the Appellant’s request to the Office of Nuclear Materials (NA-73) as it was the office most likely to possess any responsive information. The Office of Nuclear Materials conducted an electronic and manual search for information and located two responsive documents which were provided to the Appellant. See Email from Christina Hamblen, Office of General Counsel, NNSA to Kimberly Jenkins-Chapman, Attorney, OHA (February 4, 2014). Based on the foregoing, we are satisfied that NNSA 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, a reasonable search was conducted to locate the requested documents. Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the Appellant on January 23, 2014, OHA Case Number FIA-14-0007, 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

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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:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Web: ogis.archives.gov
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5759
Toll-free: 1-877-684-6448

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: February 14, 2014