

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Paul DeRienzo)
)
Filing Date: January 29, 2014) Case No.: FIA-14-0008
_____)

Issued: February 21, 2014

Decision and Order

On January 29, 2014, Paul DeRienzo (“Appellant”) filed an Appeal from a determination issued to him on November 18, 2013,¹ by the Richland Operations Office (ROO) of the Department of Energy (DOE) (FOIA Request Number FOI-2014-00096). In its determination, ROO 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 ROO has not produced. Thus, this Appeal, if granted, would require ROO to conduct another search for the documents that the Appellant requested.

I. Background

On October 7, 2013, the Appellant submitted a FOIA Request, which he modified on October 17, 2013, requesting the following:

a database printout of any documents with the keywords of “heat exchanger 4A” for the time period of 1963 through 1964 and any meeting minutes regarding leakages in the heat exchangers on or around July 18, 1963 and on or around June 10, 1963 with representatives of Burns & Roe, Combustion Engineering, and Kaiser Engineer as reported in the Irradiation Processing Department Monthly Report or June and July 1963.

See Determination Letter from Dorothy Riehle, FOIA Officer, ROO, to Appellant (Nov. 18, 2013). In its Determination Letter, ROO explained that it searched multiple databases in the Records Holding Area facility that maintains and archives records at the Hanford Site. *Id.* ROO stated that it used the key word searches of “heat exchanger(s) and heat between January 1, 1963, through December 31, 1964, and it provided the results of its search to the Appellant. *Id.* ROO

¹The Appellant stated that he received ROO’s Determination Letter on December 31, 2013.

provided the Appellant with 81 pages of documents, including a letter dated October 9, 1963, which is entitled “Repair of Heat Exchanger Unit 4A, New Production Reactor.” *Id.* However, ROO could not locate any meeting minutes that were requested by the Appellant. *Id.*

On January 19, 2014, the Appellant appealed ROO’s Determination, claiming that ROO should be able to locate more responsive documents. He argues that there is supporting evidence of leakages in the heat exchangers that was public and that there were meetings to discuss the leakages that involved representatives of Kaiser Engineers, Burns & Roe, and Combustion Engineering. *See Appeal.* Hence, he believes that there should be meeting minutes discussing the leakages and remedial actions, arguing that “[i]f the minutes or other reports on the meetings were not taken then how could remedial actions have been ordered.” *Id.* The Appellant also complains that he was not provided documents “that would detail the expense of replacement of the heat exchangers of the N-Reactor starting in 1963.” *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).²

In response to our inquiries, ROO provided us with additional information to evaluate the reasonableness of its search. ROO explained that it

conducted a thorough electronic search using the multiple databases found in the Records Holding Area, the facility that maintains and archives Hanford Site records, using key words searches of heat exchanger(s), heat exchanger 4A, and heat between January 1, 1963, through December 31, 1964. A search for records was also conducted within the Hanford Downwinder folder within the Hanford electronic database known as IDMS. IDMS is the repository for Hanford Site official correspondence.

See Memorandum from Dorothy Riehle, FOIA Officer, ROO, to Shiwali Patel, Attorney-Examiner, OHA (Feb. 18, 2014). ROO stated that the searches were conducted by those within the agency most familiar with where the documents may be found, and that it does not know of any other location where the documents could be located. *Id.* Finally, ROO stated that during its manual search of records, it “located numerous documents that pertained to Unit 4A and provided copies of those documents to the requestor (see pages 11-81) as a courtesy even though they did not fall within the modified request.” *Id.*

² 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>.

Based on the foregoing, we are satisfied that ROO has conducted an adequate search for responsive documents. 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, ROO explained that it conducted a comprehensive search for documents using the terms in the Appellant’s FOIA Request to search its databases. Moreover, even though it was not required, ROO provided the Appellant with many pages of additional documents that went beyond the scope of his FOIA Request. Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the Appellant on January 29, 2014, OHA Case Number FIA-14-0008, 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:

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 21, 2014