

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: John Qualls)
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Filing Date: April 1, 2014) Case No.: FIA-14-0021

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Issued: April 11, 2014

Decision and Order

On April 1, 2014, John Qualls appealed a March 13, 2014, determination that he received from the Department of Energy’s (DOE) Bonneville Power Administration (BPA) in response to the March 6, 2014, request for documents (FOIA # BPA-2014-00685-F) that he filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. In his appeal, Mr. Qualls challenges the adequacy of BPA’s search for documents responsive to his FOIA request.

I. Background

John Qualls filed a FOIA request with BPA on March 6, 2014, seeking “any security recordings both audio and video at the Port Angeles substation for dates 10/17/2008 – 12/01/2009.” FOIA Request Form, FOIA # BPA-2014-00685-F, dated March 6, 2014. On March 13, 2014, BPA issued a final determination in which it stated that BPA did not have any documents responsive to Mr. Qualls’ FOIA request. Letter from Christina J. Munro, Freedom of Information/Privacy Act Officer, BPA, to John Qualls (March 13, 2014) (Determination Letter). Upon receipt of the determination letter, Mr. Qualls filed the instant Appeal. Letter from John Qualls to OHA (received April 1, 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).*

In response to our inquiry in this case, BPA's physical security manager, the individual with the most knowledge of the subject matter of Mr. Qualls' FOIA request, informed us that the records that Mr. Qualls seeks do not exist. E-Mail from Jeffrey L. Millenor, Supervisory Physical Security Specialist, BPA, to Diane DeMoura, Attorney-Advisor, OHA (April 7, 2014). The FOIA pertains to those documents in an agency's possession at the time of a request. The statute does not require an agency to compile or create records for the purposes of satisfying a FOIA request. 5 U.S.C. 552; 10 C.F.R. § 1004.4(d). *See also Cause of Action*, Case No. FIA-13-0015 (2013); *Tarek Farag*, Case No. TFA-0365 (2010). Consequently, in light of the BPA subject matter expert's statement regarding the non-existence of responsive documents, we will deny Mr. Qualls' appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on April 1, 2014, by John Qualls, OHA Case No. FIA-14-0021, 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.

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Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: April 11, 2014

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