

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Tim Hadley)
)
Filing Date: September 12, 2014) Case No.: FIA-14-0051
_____)

Issued: September 29, 2014

Decision and Order

On September 12, 2014, Tim Hadley (“Appellant”) filed an Appeal from a determination issued to him on August 7, 2014, by the Office of Inspector General (OIG) of the Department of Energy (DOE) (FOIA Request Number HQ-2014-01476-F). In its determination, OIG 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 his FOIA request, which OIG has not produced. Thus, this Appeal, if granted, would require OIG to conduct another search for the documents that the Appellant requested.

I. Background

Pursuant to his FOIA Request, the Appellant seeks the following: “All records of contracts, task orders, agreements etc. that Progress energy service company submitted for reimbursement to DOE under its ARRA grant (\$200 million) which contained no deliverables.” *See* Determination Letter from Rickey R. Hass, Deputy Inspector General for Audits and Inspections, OIG, to Appellant (Aug. 7, 2014). In its determination, OIG stated that it already provided responsive documents to the Appellant when it responded to his earlier FOIA request, HQ-2014-00743-F, on April 29, 2014. *Id.* In his Appeal, the Appellant argues that OIG still did not adequately respond to his FOIA Request as it only compiled one specific audit that only included IBM contracts, claiming that there are many other vendors whose records OIG did not provide. *See* 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).¹

In response to our inquiries, OIG provided us with additional information to evaluate the reasonableness of its search. OIG stated that when it previously responded to the Appellant’s FOIA request on April 29, 2014, it provided documents in its file that were submitted by Progress Energy. *See* Email from Ruby Len, Assistant Counsel, OIG, to Shiwali Patel, Attorney Advisor, OHA (Sept. 24, 2014). In conducting a search for documents responsive to his recent FOIA Request, OIG searched its published reports online with the keyword “Smart Grid.”² OIG located three audit reports using that search, and then conducted a TeamMate³ search of two of the audit files, using the search term “Progress Energy.” One of the audit files was in hard copy and not searchable in TeamMate. Through a search of its hard copy files, OIG located responsive documents that it already provided to the Appellant when responding to his previous FOIA request.⁴ *Id.* In addition, OIG conducted a web search of its published reports using the search term “Progress Energy,” and only located a report that it already provided to the Appellant. *Id.* Finally, OIG contacted the audit division directors in the Headquarters Office and Eastern and Western regions, inquiring whether they were aware of any other responsive documents, which did not yield any results. *Id.*

Hence, based on the foregoing, we are satisfied that OIG has conducted an adequate search for 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, through conducting a web search, searching identified audit files, and contacting audit division directors to locate responsive records, we conclude that OIG’s search was reasonable. Accordingly, this Appeal will be denied.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Tim Hadley on September 12, 2014, OHA Case Number FIA-14-0051, 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

¹ Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, are available on the OHA website located at <http://www.doe.gov/oha>

² The ARRA grant referenced in the Appellant’s FOIA Request that was awarded to Progress Energy was under DOE’s Smart Grid Investment Grant (SGIG) Program. *See* Email from Ruby Len, Assistant Counsel, OIG, to Shiwali Patel, Attorney Advisor, OHA (Sept. 24, 2014).

³ TeamMate is OIG’s electronic filing system that contains all supporting documentation for its audit reports. *Id.*

⁴ OIG had previously provided the report, OAS-RA-14-03, to the Appellant. *Id.*

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