

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

In the Matter of Alex Wellerstein )  
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Filing Date: November 4, 2014 ) Case No.: FIA-14-0071  
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Issued: November 26, 2014

**Decision and Order**

On November 4, 2014, Alex Wellerstein (Appellant) filed an Appeal from a determination issued to him by the Office of Resource Management (RM) of the Office of Environment, Health, Safety, and Security of the Department of Energy (DOE) (Request No. HQ-2014-01568-F). In that determination, RM responded to a request 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. RM released three documents to the Appellant. This Appeal, if granted, would require RM to perform an additional search for responsive documents.

**I. Background**

On August 6, 2014, the Appellant filed a request with RM for an electronic copy of the index for OHP Marshall Islands Document Collection. Request Letter received August 6, 2014, from Appellant to FOIA Request Service Center, DOE. In its determination, RM released three documents in their entirety. Determination Letter dated September 25, 2014, from Raymond C. Holmer, Acting Director, RM. According to the Appellant, the documents were an “out-of-date Index, along with two pages taken from the old Marshall Islands website.” Appeal Letter dated October 8, 2014, from Appellant to Director, Office of Hearings and Appeals (OHA), DOE.<sup>1/</sup> The Appellant challenges the search for the requested index on the ground that the released index reflects “26 fewer documents than the decades-old Index that the RMI [Republic of the Marshall Islands] Embassy had, and 2,942 fewer documents than the actual final Index for the database that was taken offline” in 2013 by the DOE Office of Environment, Health, Safety and Security. *Id.*

**II. Analysis**

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<sup>1/</sup> Although the Appeal Letter was dated October 8, 2014, the filing date for the Appeal is November 4, 2014. The process of irradiation delayed the DOE’s receipt of the Appeal letter. Further, the Appellant did not include a copy of the Determination Letter with the Appeal Letter, as required by the regulations. The Appellant filed the Determination Letter on November 4, 2014, thereby perfecting his Appeal.

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>

In response to our inquiries, RM described its search for the requested index. RM searched both by hand and by computer. RM stated,

The original 1995 computer disks containing the database were located by a hand search of office files. A computer was then used to install [the] 1995 version of FolioView 3.1 software package used by the database and to convert the index of the database from the Marshall.nfo FolioView database file to pdf files and a MS Word file.

E-mail dated November 14, 2014, from Ray Holmer, RM, to Janet R. H. Fishman, OHA. RM continued that the Marshall Islands subject matter expert (SME) conducted the search. *Id.* RM also stated that the database was created under a contract through the DOE Nevada site which expired in 2005. *Id.* The 2005 version was given to the Republic of the Marshall Islands in 2005, but RM was unable to find a copy of the 2005 version in its files. *Id.* By having the SME conduct the search, RM had the most knowledgeable person handle the request. According to RM, the Marshall Islands Collection index was a “dynamic part of [the] database that was created when a search was performed.” E-mail dated November 20, 2014, from Raymond Holmer, RM, to Janet R. H. Fishman, OHA. RM continued that “there was no fixed index for the most recent version of the Marshall Islands collection due to the dynamic nature of the database and the .asp programming used to make it web accessible.” *Id.* Based on the foregoing, we are satisfied that RM conducted an adequate search for the requested index. 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.

### III. Conclusion

After considering the Appellant’s arguments, we are convinced that the search was reasonable as conducted. Accordingly, the Appeal should be denied.

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<sup>2/</sup> 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>.

It Is Therefore Ordered That:

- (1) The Appeal filed by Alex Wellerstein, Case No. FIA-14-0071, 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 the provisions of 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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Date: November 26, 2014