

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

In the Matter of Cause of Action	)	
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Filing Date: February 3, 2015	)	Case No.: FIA-15-0006
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Issued: February 27, 2015

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**Decision and Order**  
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On February 3, 2015, Cause of Action (Appellant) filed an Appeal from determinations issued to it by the Department of Energy (DOE) Office of Executive Secretariat (ES) and the DOE Office of Congressional and Intergovernmental Affairs (CI) (Request No. HQ-2015-00248). In those determinations, ES and CI 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. Each of ES and CI stated in its respective determination letter that it had not located any document responsive to the request. This Appeal, if granted, would require that ES and CI conduct an additional search for responsive information.

**I. Background**

On November 14, 2014, the Appellant filed a request with DOE for access to the text messages, Blackberry messenger chats, and SMS messages sent or received during the time period of November 2, 2014, to November 8, 2014, by the following DOE employees (and/or the person who then held the named position):

Ernest Moniz, Secretary of Energy  
Kevin Knobloch, Chief of Staff  
Brendan Daly, Director of Public Affairs  
Bradley Crowell, Assistant Secretary for Congressional and Intergovernmental Affairs  
Rhonda Carter, White House Liaison

Request Letter dated November 14, 2014, from Appellant to Alexander Morris, DOE FOIA Officer, DOE Office of Information Resources (OIR). OIR assigned this request to three separate DOE offices (ES, CI and the DOE Office of Public Affairs (PA)) to conduct a search of their files for responsive documents. Letter dated December 4, 2014, from OIR to Appellant. In

response to the request, ES, CI and PA issued separate determination letters to the Appellant, each of which stated that no documents responsive to the request had been located. Letter dated December 15, 2014, from OIR to Appellant (PA Response); Letter dated January 8, 2015, from OIR to Appellant (ES Response); Letter dated January 16, 2015, from OIR to Appellant (CI Response). The Appellant challenges the searches by ES and CI for responsive documents. Appeal Letter dated February 3, 2015, from Appellant to Director, Office of Hearings and Appeals (OHA), DOE.

## 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).<sup>1</sup>

To determine what type of search was conducted in response to the request, we contacted OIR and were informed that DOE had determined that responsive records would not exist in the DOE computerized data base and that each DOE office in which an individual named in the request was located was assigned to search its files for responsive documents.<sup>2</sup> We confirmed with the DOE Office of the Chief Information Officer (CIO) that text messages, Blackberry messenger chats or SMS messages sent or received during the relevant period by a DOE Blackberry or other individual device would not have been logged, documented or in any way transferred or recorded in a DOE computerized database. Emails dated February 18 – 25, 2015, between David Winingham (CIO) and Wade M. Boswell, Attorney Advisor (OHA).

Each of ES and CI provided us with information to evaluate the reasonableness of its search. ES stated that Secretary Moniz, Kevin Knobloch and Rhonda Carter are each assigned one DOE cellular phone<sup>3</sup> and that on January 6, 2015, each of those phones was manually searched for text messages and Blackberry messenger chats sent or received during the period of November 2, 2014, through November 8, 2014, by opening the relevant icons on the phone and examining such locations. None of the individuals use an SMS message function independent of the standard text message function on his or her DOE assigned phone. The manual searches of Secretary Moniz’s and Mr. Knobloch’s DOE assigned phones were conducted by their respective executive assistants; Ms. Carter personally searched her DOE assigned phone. As stated in the

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<sup>1</sup> OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://energy.gov/oha/foia-cases>.

<sup>2</sup> Since the Appeal did not challenge the PA Response, we made no inquiry respecting the search conducted by PA or the DOE cellular phone assigned to the DOE Director of Public Affairs.

<sup>3</sup> Secretary Moniz is assigned a DOE iPhone; Mr. Knobloch and Ms. Carter are each assigned a DOE Blackberry.

ES Response, such manual searches revealed no documents responsive to the request. Emails dated February 18 – 19, 2015, between Amy Bodette (ES) and Wade Boswell (OHA).

CI stated that Bradley Crowell is assigned one DOE Blackberry, and that on January 7, 2015, Mr. Crowell personally conducted a manual search of his DOE assigned phone for text messages and Blackberry messenger chats sent or received during the period of November 2, 2014, through November 8, 2014, by opening the relevant icons on his phone and examining such locations. He does not use an SMS message function independent of the standard text message function on his DOE assigned Blackberry. As stated in the CI Response, such manual search revealed no documents responsive to the request. Emails dated February 18, 2015, between Tre Easton (CI) and Wade Boswell (OHA).

To confirm that the search conducted was appropriate in scope, we specifically inquired whether any text message or Blackberry messenger chat sent or received by an individual named in the request, during the time period specified in the request, was copied or reduced to paper format. ES and CI verified that no responsive document was copied or reduced to paper format. Emails dated February 18, 2015, between Amy Bodette (ES) and Mark Appleton (Assistant to DOE Secretary of Energy); Emails dated February 18, 2015, between Amy Bodette (ES) and Rhonda Carter (DOE White House Liaison); Emails dated February 18, 2015, between Tre Easton (CI) and Wade Boswell (OHA); Emails dated February 18 – 19, 2015, between Amy Bodette (ES) and Wade Boswell (OHA). Therefore, in addition to the manual searches of the DOE assigned phones not locating any records (as explained above and described in the CI and ES Responses), there were no paper documents to search.

The courts in *Truitt* and *Miller* require that an agency responding to a FOIA request must conduct a search reasonably calculated to uncover all relevant documents. Based on the foregoing description of the search, we find that ES and CI performed a search reasonably calculated to reveal documents responsive to the Appellant's request.

### **III. Conclusion**

After considering the Appellant's argument, we have determined that the search was adequate. Accordingly, the Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Cause of Action, Case No. FIA-15-0006, 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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Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: February 27, 2015