

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

In the Matter of Sabine Lauer)		
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Filing Date: March 16, 2015)	Case No.:	FIA-15-0011
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Issued: April 9, 2015

Decision and Order

On March 16, 2015, Ms. Sabine Lauer (Appellant) filed an Appeal from a determination issued to her by the National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) (Request No. 15-00050-R). In that determination, the NNSA 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. This Appeal, if granted, would require the NNSA to conduct an additional search for responsive information.

I. Background

On November 26, 2014, the Appellant filed a FOIA request with the NNSA. The request asked for reports on Ms. Sabine Lauer, or complaints against her, from personnel in two specific locations at Los Alamos National Laboratory (LANL¹ or Laboratory). The request also asked for videos of any attempt by Ms. Lauer to enter particular areas at the Laboratory. The FOIA request did not specify any time ranges and did not, with respect to the videos, identify a location.

In response to the request, the NNSA released one document. Determination Letter dated March 16, 2015, from Pamela Arias-Ortega, Authorizing and Denying Official, NNSA, to Appellant at Attachment 1. That document consisted of two e-mails: (1) an October 1, 2014, e-mail (October 1 e-mail) regarding an incident involving Ms. Lauer, and (2) a January 6, 2015, e-mail (January 6 e-mail) regarding the Appellant’s FOIA request. *Id.* The October 1 e-mail stated, without further context, “[t]he former employee we have seen in the building is Sabine Lauer” *Id.* The January 6 e-mail forwarded the October 1 e-mail and stated, “[t]he e-mail below reflects our response to the document request. The videos will [be] sent to you separately.”² *Id.*

¹ Los Alamos National Security, LLC (LANS) manages LANL for the DOE/NNSA pursuant to a Management and Operations contract. The term “LANL,” as used in this decision, includes LANS.

² The NNSA redacted portions of both e-mails pursuant to Exemption 6 of the FOIA to shield the privacy of LANL personnel. Ms. Lauer does not challenge NNSA’s determination regarding these redactions.

The Appellant challenges the adequacy of the NNSA's search for responsive documents and video on two grounds. First, the Appellant contends that the October 1 e-mail apparently continues earlier communication about a former employee in a particular building and that other correspondence must therefore exist. Appeal Letter dated March 16, 2015, from Appellant to Director, Office of Hearings and Appeals (OHA), DOE. Second, the Appellant contends that the January 6 e-mail discussing the sending of videos in response to her request indicates that responsive videos exist that were not produced. *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).³

When we contacted the NNSA to determine what type of search was conducted in response to the request, we were referred to the NNSA's Los Alamos Field Office (LAFO), which had coordinated the search for responsive records at LANL. LAFO then requested that LANL provide us with additional details about the search. According to information obtained from LANL, personnel at the Laboratory, prior to receiving the request, had handled incidents involving Ms. Lauer's presence at LANL on two dates: September 29, 2014, and October 20, 2014. E-mail from Teri McHugh to Geraldine Trujillo dated March 30, 2015 (McHugh E-mail I). LANL therefore interpreted Appellant's request as seeking information about the incidents on those dates only. *See id.*

When the LANL received the FOIA request received, it determined that two people with direct knowledge of the incidents would be most likely to have responsive records. E-mail from Teri McHugh to Geraldine Trujillo dated April 2, 2015 (McHugh E-mail II). Both individuals conducted a search of their e-mail records for references to Sabine Lauer. *Id.* The search produced the October 1 e-mail and no others. *Id.*

With regard to its search for responsive videos, LANL informed us that, soon after it learned that Ms. Lauer had been in a particular building on September 29, 2014, and October 20, 2014, LANL reviewed video taken on those dates. McHugh E-mail I. LANL then provided us with specific details of its efforts to review the video taken on those dates, and to identify any segments of that video responsive to Ms. Lauer's request. *See* McHugh E-mails I and II. We are convinced that LANL performed an adequate search for responsive video, and found none.

The courts in *Truitt* and *Miller* require that an agency responding to a FOIA request conduct a search reasonably calculated to uncover all relevant documents. Based on the foregoing description of the search, we find that the NNSA asked the LANL employees most likely to be in

³ OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://energy.gov/oha/foia-cases>.

possession of any responsive records to perform a search. Those employees conducted 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 NNSA's search for responsive documents was adequate. Accordingly, the Appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed by Ms. Sabine Lauer, Case No. FIA-15-0011, 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.

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:

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Poli. A. Marmolejos
Director
Office of Hearings and Appeals

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