

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

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| In the Matter of Shawn Hughes | ) |           |             |
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| Filing Date: April 15, 2015   | ) | Case No.: | FIA-15-0019 |
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Issued: May 7, 2015

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**Decision and Order**

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On April 15, 2015, Mr. Shawn Hughes (Appellant) filed an Appeal from a determination issued to him by the National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) (FOIA Request No. 14-00170-H). In its determination letter, the NNSA responded to a request filed by Mr. Hughes 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 do an additional search for responsive documents.

**I. Background**

On May 3, 2013, Mr. Hughes submitted a FOIA request to the DOE seeking electronic copies of three documents he described as follows:

- (1) TP 4-24 Production Nomenclature List, 16 FEB 1994
- (2) TP 4-27 SM-4 Nomenclature and Support Information for WR and WR type Components, 15 DEC 1969
- (3) SM-4 Nuclear Weapon Characteristics Report, Oct. 1985 RS-8232-2/63401

Request from Shawn Hughes to DOE dated May 3, 2013. We will refer to the above documents as Document #1, Document #2, and Document #3, respectively. DOE headquarters forwarded his request to the NNSA, the DOE agency handling nuclear weapons activities. Letter from Alexander C. Morris to Shawn Hughes dated May 16, 2013. On March 26, 2015, the NNSA issued a determination letter explaining that it had sent the request to the Sandia Field Office (SFO), which oversees Sandia National Laboratories (SNL or Sandia). Determination Letter from NNSA to Shawn Hughes dated March 26, 2015. According to the letter, SFO and SNL located Document #2 but not the other two items. *Id.* After consulting with the Department of Defense (DoD), the NNSA determined that the entirety of Document #2 should be withheld pursuant to Exemptions 1 and 3 of the FOIA. *Id.*; *see also* 5 U.S.C. § 552(b)(1); 5 U.S.C. § 552(b)(3).

On April 15, 2015, Mr. Hughes filed an appeal challenging the adequacy of the search for Documents #1 and #3, as well as the decision to withhold Document #2. *See* Appeal Letter dated April 14, 2015. Because our consideration of the NNSA's withholdings in this case requires consultation with the DOE's Office of Classification, we determined that bifurcation of the present Appeal would allow for a more timely consideration of whether the NNSA performed an adequate search for Documents #1 and #3. In the present decision (OHA Case No. FIA-15-0019), we therefore will consider only the adequacy of the search for those documents. We will consider the NNSA's decision to withhold Document #2 under Exemptions 1 and 3 in a separate decision that will be issued as OHA Case No. FIC-15-0001.

## 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., Ralph Sletager*, Case No. FIA-14-0030 (2014).<sup>1</sup>

When we contacted the NNSA with questions about its search for responsive documents, SNL prepared a detailed memorandum in response. Memorandum from Camelia Pearson, Sandia Corporation<sup>2</sup>, to Jennifer Bitsie, SFO, dated May 4, 2015 (SNL Memo). According to SNL, it searched for responsive records in the Sandia Corporate Archives and the Technical Library, two Sandia locations that typically have reports of the kind requested by Mr. Hughes. *Id.* In both locations, SNL personnel searched electronic databases using a variety of keywords drawn from the document names. *Id.* SNL also performed a manual search at the Technical Library. Memorandum from Jacquelyn Silva, Sandia Corporation, to Jennifer Bitsie, SFO, dated July 11, 2013. Only Document #2 was located. *Id.* With respect to Document #1, the Technical Library staff recommended a search at another Sandia location where reports are filed, the records of the Military Liaison, but the document was not found there either. SNL Memo. SNL stated that it does not know of any other DOE location likely to have the document. *Id.*

SNL did state that it is "likely" that Document #3 is available at another Sandia location, but that the document is a DoD record. *Id.* SNL added that in a June 19, 2013, memo to the SFO, it had stated that the document was a classified DoD record and that the requester should obtain it directly from DoD.<sup>3</sup> We observe, however, that DOE regulations provide that when responsive records originate in another agency, the DOE is required to refer the request to that agency and so inform the requester. 10 C.F.R. § 1004.4(f)(1). Accordingly, if SNL does have Document #3

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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> The Sandia Corporation, a subsidiary of Lockheed Martin, is the management and operations contractor for SNL.

<sup>3</sup> The June 13, 2013, memo, obtained by the OHA, states that the document is "not a Sandia record" and that DoD is the "information owner" of the document. Memorandum from Jacquelyn R. Silva, Sandia Corporation, to Wanda Peigler, Sandia Site Office, dated June 19, 2013.

in its possession, and if the document came from the DoD, it is the responsibility of the NNSA to send the document to the DoD for processing and inform Mr. Hughes. It is not Mr. Hughes's responsibility to file a new FOIA with the DoD.

We therefore will partially remand Mr. Hughes's appeal to the NNSA so that it may verify that Document #3 is in its possession and revise its determination letter accordingly. As to Document #1, we find that the search conducted was adequate. 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 conducted a search reasonably calculated to locate that document.

It Is Therefore Ordered That:

- (1) The Appeal filed by the Appellant, Case No. FIA-15-0019, is hereby denied in part and remanded in part as set forth in Paragraph (2) below.
- (2) This matter is hereby remanded to the NNSA to issue a new determination with respect to Document #3 in accordance with the instructions set forth in this Decision.
- (3) 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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