

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

In the Matter of Raymond W. Stephens, Jr.)	
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Filing Date: August 3, 2015)	Case No.: FIA-15-0042
)	
_____)	

Issued: August 26, 2015

Decision and Order

On August 3, 2015, Mr. Raymond W. Stephens, Jr. (Appellant) filed an Appeal from a determination issued to him by the Oak Ridge Office (ORO) of the Department of Energy (DOE) (Request No. ORO-2015-01565-F). In that determination, ORO responded to a request for information filed by the Appellant 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 an additional search for responsive documents.

I. Background

On June 15, 2015, the Appellant filed a FOIA request with the Office of Information Resources (OIR) at DOE. Request from Appellant to OIR (June 15, 2015). In his request, he sought three subcontracts between various DOE contractors and Loral American Beryllium Co.:

- (1) Contract-Subcontract Number 77X-95070V With all Extensions and Modifications From Union Carbide Transferred to Martin Marietta Energy Systems 1984-85 PO Box M, Oak Ridge, Tennessee 37831 and Loral American Beryllium Co. . . .
- (2) Contract-Subcontract Number K-2685 1984-1985 From EG&G Idaho Inc. and Loral American Beryllium Co. . . .
- (3) Contract-Subcontract Number F-04704-B6-C-0198 Peace Keeper With all Extensions and Modifications From Northrop Corporation Electronics Division Hawthorne, California and Loral American Beryllium Co. . . .

Id. On July 7, 2015, OIR informed the Appellant it had transferred the request to ORO because any responsive documents held by DOE would be under ORO's jurisdiction. Response Letter from Alexander Morris, OIR, to Appellant (July 7, 2015). In a subsequent determination, ORO

stated that it was unable to locate any agency records responsive to the request. Determination Letter from Amy Rothrock, ORO, to Appellant (July 22, 2015) (Determination Letter).

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).¹

In the instant matter, we will refer to the requested documents as Document #1, Document #2 and Document #3. When we contacted ORO about its search for responsive documents, ORO stated that it searched for all three documents in its Records Holding Area, where ORO keeps retired records. Memorandum of Telephone Conversation between Linda Chapman, ORO, and Gregory Krauss, OHA (August 8, 2015). Using an electronic finding aid that contains information about each record, ORO searched under the names of the companies and subcontract numbers, as specified in the request. *Id.* ORO found no responsive records. *Id.*

ORO also informed us that of the three requested documents, only Document #1 appeared linked to Oak Ridge. *Id.* Union Carbide Corporation (UCC) and Martin Marietta Energy Systems (MMES) are both former Oak Ridge contractors. *See id.* ORO further informed us that it was not customary for UCC or MMES to provide DOE with copies of subcontracts. Memorandum of Telephone Conversation between Linda Chapman, ORO, and Gregory Krauss, OHA (August 12, 2015). In fact, ORO stated that its files holding contractual records related to MMES contain no subcontracts. *See* E-mail from Linda Chapman, ORO, to Gregory Krauss, OHA (August 17, 2015) (Chapman E-mail).²

As part of our review, we also contacted OIR to understand how it determined that any responsive records in DOE’s possession would be held by ORO. OIR stated that it sent the request to ORO mainly to determine whether ORO would have Document #1. Memorandum of Telephone Conversation between Yordanos Woldai, OIR, and Gregory Krauss, OHA (August 10, 2015) (Woldai Memo). As to Document #2, OIR contacted DOE’s Idaho Operations Office (IOO) because the request’s description of that document referred to EG&G Idaho, Inc. *Id.* IOO told OIR that it did not have Document #2 because any subcontracts in its possession would have been destroyed more than a decade ago under IOO’s records retention schedule. E-mail from

¹ OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://energy.gov/oha/office-hearings-and-appeals>.

² ORO stated that contracts relating to UCC are stored in its Records Holding Area while the MMES contract records are held by ORO’s Procurement and Contracts Division. *See* Chapman E-mail. As noted, an electronic search of the Records Holding Area was performed. Regarding the Procurement and Contracts Division records, a search was unnecessary because, as observed, the MMES contract files contain no subcontracts.

Clayton Ogilvie, IOO, to Yordanos Woldai, OIR (July 6, 2015). OIR also contacted the Office of Headquarters Procurement Services (Procurement Services) to ask whether it would have the subcontracts, but Procurement Services stated that it did not maintain copies of site office contracts, let alone subcontracts. E-mail from Frederick Dann, Procurement Services, to Yordanos Woldai, OIR (June 17, 2015). OIR could not identify any other DOE location likely to have any of the documents.³ See Woldai Memo. Accordingly, OIR sent the request to ORO only. *Id.*

Finally, we shared the request with the Office of Legacy Management (LM), which holds records on certain former DOE sites. LM stated that it could not identify any LM site that might be associated with any of the requested documents. E-mail from Tamara Wilson, LM, to Gregory Krauss, OHA (August 17, 2015).

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. *Miller*, 779 F.2d at 1384-85; *accord Truitt*, 897 F.2d at 542. Based on the foregoing description of the search, we find that ORO was the location most likely to have any relevant documents and that OIR therefore properly sent ORO the request. We further find that ORO conducted a search reasonably calculated to locate responsive documents.

It Is Therefore Ordered That:

- (1) The Appeal filed on August 3, 2015, by Raymond Stephens, Case No. FIA-15-0042, 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:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740

³ With respect to Document #3, Procurement Services informed us that it could find no information in its electronic databases about any contractor with a name similar to “Northrop Corporation Electronics Division.” E-mail from Frederick Dann, Procurement Services, to Gregory Krauss, OHA (August 17, 2015). Accordingly, we could not identify any suitable location for that search. Procurement Services further informed us that it does not duplicate in its own official records contracts or subcontracts held at DOE sites. Memorandum of Telephone Conversation between Frederick Dann, Procurement Services, and Gregory Krauss, OHA (August 17, 2015).

Web: ogis.archives.gov
Email: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Poli. A. Marmolejos
Director
Office of Hearings and Appeals
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