

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

In the Matter of Martin Peck)	
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Filing Date: July 1, 2016)	Case No.: FIA-16-0043
)	
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Issued: July 20, 2016

Decision and Order

On July 1, 2016, Martin Peck (Appellant) appealed a determination received from the National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) (Request No. FOIA 16-00166-K). In that determination, 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. The Appellant challenges the adequacy of NNSA’s search for responsive documents. As explained below, we have determined that the Appeal should be denied.

I. Background

On June 1, 2016, the Appellant filed a FOIA request for “a list of technical payloads equipped to MQ-9 Reaper or RQ-170 Sentinel unmanned aircraft during testing at Area 6, as managed by the Nevada field office....[to include a] list of all test payloads of a technical nature, including radio and sensing platforms...years 2010 through 2015, inclusive.” FOIA Request Email from Martin Peck (June 1, 2016). On June 13, 2016, NNSA sent a letter to the Appellant stating that “[n]o responsive records exist as neither the NNSA [Nevada Field Office] nor its contractors manage or operate the MQ-9 Reaper or RQ-170 Sentinel unmanned aircraft at the Nevada National Security Site.” Determination Letter from Jane R. Summerson, Authorizing and Denying Official, NNSA to Martin Peck (June 13, 2016). On June 30, 2016, the Appellant appealed the Determination Letter stating that he has “news reports, statements to the press, and press wires which all contradict the claims of no responsive documents.”¹ FOIA Appeal Email from Martin Peck (June 30, 2016).

¹ The Appellant did not provide any such documents with his FOIA Appeal.

II. Analysis

The FOIA requires that a search be reasonable, not exhaustive. “[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 v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). In cases such as these, “[t]he issue is *not* whether any further documents might conceivably exist but rather whether the government’s search for responsive documents was adequate.” *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1981) (emphasis in original). 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).²

We contacted NNSA to determine how the search was conducted in this case and NNSA referred us to the FOIA official at the Nevada Field Office (NFO). Email Chain between Karen Laney, NNSA, and Brooke DuBois, OHA (July 11, 2016). The NFO official confirmed the statement in the Determination Letter that neither NNSA NFO nor its contractors operate the unmanned aircrafts referred to in the FOIA request. Memorandum of Telephone Conversation between Darwin J. Morgan, Office of Public Affairs, NNSA NFO, and Brooke DuBois, Attorney-Advisor, OHA (July 11, 2016). Consequently, no further search was undertaken since NNSA NFO believed responsive records would not exist. *Id.* We find, however, the fact that NNSA NFO does not operate the MQ-9 Reaper or RQ-170 Sentinel unmanned aircraft does not mean NNSA NFO does not possess any records that would be responsive to the FOIA Request. Therefore, we will remand this matter to NNSA to complete a database search for any responsive documents and issue a new determination letter.

III. Conclusion

Based on the foregoing, we find that NNSA did not conduct a search reasonable calculated to uncover materials sought by the Appellant, and that this search was therefore inadequate. Thus, we will grant the present Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on July 1, 2016, by Martin Peck, Case No. FIA-16-0043, is hereby granted as set forth in Paragraph (2) below.
- (2) This matter is hereby remanded in part to the National Nuclear Security Administration, which shall issue a new determination in accordance with the instruction set forth in the above 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.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at www.energy.gov/oha.

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Director
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Date: July 20, 2016