

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

In the Matter of Wynship W. Hillier	)		
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Filing Date: October 3, 2016	)	Case No.:	FIA-16-0052
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Issued: November 8, 2016

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**Decision and Order**

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On October 3, 2016, Wynship W. Hillier (Appellant) appealed a determination that he received from the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA) on August 29, 2016 (Request No. 16-00180-H). 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 NNSA’s determination that there are no documents responsive to his request. As explained below, we have determined that the Appeal should be granted.

**I. Background**

On November 20, 2015, the Appellant filed a request for “aggregate documents such as lists, databases, or logs, detailing relationships established between NARAC and its clients granting access to NARAC-provided models...extending back through 2007...” FOIA Request from Wynship W. Hillier (November 20, 2015). In a January 20, 2016, determination letter, NNSA stated that it conducted a search of the National Atmospheric Release Advisory Center (NARAC), and that no responsive documents were found. Determination Letter from Jane R. Summerson, Authorizing and Denying Official, NNSA to Wynship W. Hillier (January 20, 2016).

On March 2, 2016, the Appellant challenged this determination. Appeal Letter from Wynship W. Hillier to Director, Office of Hearings and Appeals (February 23, 2016). On March 18, 2016, OHA denied the Appeal, finding that there is no list containing the requested information, and that to provide the information sought in the request, NNSA would have to manually go through data in its computer systems to extract the requested information, which the FOIA does not require. Decision and Order (March 18, 2016). In a May 23, 2016, letter, the Appellant asked OHA to modify its Decision and Order, but OHA found that he had not alleged any “significantly changed

circumstances” to warrant review of the prior decision. Letter from Poli A. Marmolejos, Director, OHA to Wynship Hillier (June 1, 2016).

On June 20, 2016, the Appellant filed a FOIA request for “records identifying the clientele of the National Atmospheric Release Advisory Center (NARAC) at Lawrence Livermore National Laboratory (LLNL)” seeking records through 2007 or as far back as possible. FOIA Request from Wynship W. Hillier (June 20, 2016). The FOIA Request clarified that by “clientele” it intended “clients of NARAC’s professional services and remote users of its computerized modeling capability....” *Id.* In an August 29, 2016, Determination Letter, NNSA stated that it determined the Appellant was requesting the same information as his previous November 20, 2015, FOIA Request. Determination Letter from Jane R. Summerson, Authorizing and Denying Official, NNSA to Wynship W. Hillier (August 29, 2016). NNSA reiterated its previous determination that LLNL had no records responsive to the Appellant’s request and stated that NARAC would have to “build information by manually searching through both computer and archived hard copy data to create responsive records.” *Id.*

On October 3, 2016, the Appellant appealed this Determination Letter, stating that based on the March 18, 2016, Appeal Decision, he made his FOIA Request “shorter, clearer, and included fewer specifications as to the records sought, in an effort to avoid the same result.” Appeal Letter from Wynship W. Hillier to Director, OHA (October 2, 2016).

## 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).

We contacted NNSA to determine how the search was conducted for this request. NNSA informed us that despite believing this request was identical to the Appellant’s previous request, it still inquired with LLNL as to whether it could answer the request. Email from Christina Hamblen, NNSA, to Brooke DuBois, OHA (October 11, 2016). According to LLNL, NARAC does not maintain a list of current or historical clientele. However, LLNL indicated that it has an electronic database of those who currently have access to NARAC, but this database does not specify how a particular user has accessed the database, such as remote access. LLNL also stated that it does not track past users of NARAC systems or clients who requested NARAC services through non-online mechanisms in any manner. *Id.* LLNL subsequently indicated that it could export information on those who have current access to NARAC to an Excel spreadsheet, but that it did not believe the exportable information was what the Appellant wanted. Email from Debbie Harkness, NNSA, to Brooke DuBois, OHA (October 25, 2016). LLNL again reiterated that it believed reviewing the information for redactions would be costly and time consuming. *Id.*

Based on the above, we find that while NNSA does not maintain a document listing NARAC “clientele” as the Appellant requested, it can extract information which may be responsive to this

FOIA request. As it relates to the assertion that reviewing this information for redactions would be time consuming and costly to the requestor, it is the responsibility of NNSA to communicate with the requestor in order to determine whether he is willing to pay the fees associated with his request. 10 C.F.R. § 1004.9(a)(7); *see also Burlin McKinney*, OHA Case No. VFA-0322 (1997). Therefore, we remand this matter to NNSA for further processing.

### **III. Conclusion**

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

It Is Therefore Ordered That:

- (1) The Appeal filed on October 3, 2016, by Wynship W. Hillier, Case No. FIA-16-0052, is hereby granted as set forth in Paragraph (2) below.
- (2) This matter is hereby remanded to the National Nuclear Security Administration, which shall issue a new determination in accordance with the instructions 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.

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Director  
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