



Department of Energy

Washington, DC 20585

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

In the Matter of Carroll Lash)
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Filing Date: November 13, 2017) Case No.: FIA-17-0045
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Issued: **DEC - 4 2017**

Decision and Order

On November 13, 2017, a representative on behalf of Carroll Lash (Appellant) filed an Appeal from a determination issued by the Department of Energy (DOE) Environmental Management Consolidated Business Center (EMCBC) (Request No. EMCBC-00627-17). In that determination, EMCBC 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. EMCBC located and released several documents, but it withheld some of the information under FOIA Exemption 6.¹ The Appellant challenged the adequacy of EMCBC’s search. This Appeal, if granted, would require EMCBC to conduct an additional search for responsive information.

I. Background

On February 4, 2017, the Appellant filed a request with EMCBC seeking several different categories of information regarding the Appellant’s employment by North American Aviation Atomics International/Rocketdyne between 1961 and 1966, especially at the Santa Susana Field Laboratory (SSFL). FOIA Request Email (Request). In response, EMCBC issued a determination letter, releasing 24 pages of documents. Determination Letter (September 18, 2017). EMCBC released all of the records it located, but it also redacted and withheld information under Exemption 6. *Id.*

On November 13, 2017, the Appellant appealed EMCBC’s Determination. Appeal Letter (November 13, 2017). In the Appeal, the Appellant challenged the adequacy of EMCBC’s search for responsive information. *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.” *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). The standard of reasonableness we apply

¹ The Appellant is not challenging the withholdings under Exemption 6.



“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).²

A. Boeing’s Search

We spoke with EMCBC regarding how the search was conducted for the Appellant’s FOIA request. The Appellant worked for the Boeing Company (Boeing), a DOE contractor, which is contractually required to perform a search for records under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), the Privacy Act, and the FOIA. Therefore, Boeing conducted a search for the requested information.

Boeing maintains personnel type records related to its employees. In the instant case, Boeing claimed it searched its records for responsive documents. EMCBC could not confirm what type of search Boeing conducted, but presumed it used the Appellant’s name and social security number to conduct the search. November 20, 2017, E-mail chain between EMCBC and OHA. During the pendency of this Appeal, Boeing did search its files for additional information and found one document. That document was released to the Appellant. However, without actual confirmation from Boeing of what type of search was conducted and how that search was conducted, we are unable to confirm that it conducted a search reasonably calculated to uncover responsive documents. Therefore, we will remand the matter to EMCBC to gather information on what type of search Boeing conducted in response to the request.

B. EMCBC’s Search

Boeing has provided EEOICPA files to EMCBC when Boeing processes a claim. EMCBC indicated that it searched the EEOICPA files, accident files, and visitor logs to complete its search. *Id.* EMCBC searched using the Appellant’s name and social security number. Based on the foregoing, we conclude that EMCBC conducted a search reasonably calculated to uncover documents responsive to the Appellant’s request. In reaching our conclusion, we reviewed the arguments and information provided in the Appellant’s Appeal Letter. The Appellant’s representative based her arguments that documents must exist on presumptions. She states, “[a]s a Quality Control Analyst *presumably* based out of Canoga Facility, Mr. Lash would have been expected to perform job duties at SSFL.” Appeal Letter at 3. In addition, she states the Appellant was a “Salaried Employee” and, therefore, not assigned to Time Clock Locations. Appeal Letter at 3. Yet earlier in the letter, she complains that no Kardex data was supplied for the Appellant, as should be for an employee for whom a “Time Clock Location Summary” has been created. *Id.* at 3.

As we stated above, a search under the FOIA must be reasonable, but not exhaustive. *Miller v. Dep’t of State*, 779 F.2d at 1384-85; *accord Truitt v. Dep’t of State*, 897 F.2d at 542. EMCBC

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

searched the documents that Boeing provided to it in response to the EEOICPA claim. It conducted a search reasonably calculated to uncover responsive documents.

III. Conclusion

For the reasons stated above, we could not conclude that Boeing conducted an adequate search without more information regarding what type and what was searched. However, we can conclude that EMCBC conducted an adequate search based on the Appellant's request. We will, therefore, grant the Appeal in part and deny the Appeal in part and remand the matter to EMCBC to determine what type of search Boeing conducted.

IV. Order

It is hereby ordered that the Appeal filed on November 13, 2017, by Carroll Lash, Case No. FIA-17-0045, is granted in part and denied in all other respects.

This matter is hereby referred to the Department of Energy's Environmental Management Consolidated Business Center, which shall issue a new determination in accordance with the instructions set forth in the above Decision.

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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