

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

In the Matter of Institute for Research: )  
Middle Eastern Policy, Inc. )  
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Filing Date: January 8, 2018 ) Case No.: FIA-18-0003  
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Issued: January 31, 2018

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**Decision and Order**

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On January 8, 2018, the Institute for Research: Middle Eastern Policy, Inc. (Appellant) appealed a determination letter issued to it from the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA) (Request No. FOIA 17-00228-R). In the 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. NNSA stated that it found no responsive documents. The Appellant challenged the adequacy of the search. This Appeal, if granted, would require an additional search for responsive information.

**I. Background**

On May 16, 2017, the Office of Public Information (OPI) received a FOIA request from the Appellant, requesting “copies of all DOE classification briefing correspondence, including DOE emails, calendar entries, memos and all other correspondence from classification officials charged with implementing WPN-136.” Amended FOIA Request (May 17, 2017). The Appellant clarified that “[t]his is included [sic] but not limited to correspondence related to the provision of ‘special briefings’ about skirting the issue of Israel’s nuclear weapons.” *Id.* The Appellant additionally noted that “WPN-136 is a classification bulletin titled ‘Guidance on Release of Information Relating to the Potential for an Israeli Nuclear Capability.’” *Id.* In response, OPI assigned the request to DOE’s Office of Environment, Health, Safety and Security (AU), which did not locate any responsive documents. OPI Determination Letter (September 20, 2017). Accordingly, OPI transferred the request to 18 additional DOE offices, one of which was NNSA. *Id.* NNSA conducted a search and did not locate any responsive documents. NNSA Determination Letter (December 11, 2017).

On January 8, 2018, the Office of Hearings and Appeals (OHA) received the Appellant’s challenge to NNSA’s determination. FOIA Appeal (January 8, 2018). In the Appeal, the Appellant alleges

that an adequate search was not conducted as “DOE employees are known to receive training on how to implement WPN-136.” *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 “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>

NNSA provided our office with information regarding the search it conducted to process the Appellant’s FOIA request. Within NNSA, four separate offices received and reviewed the FOIA request: (1) Office of Defense Programs (NA-10); (2) Office of Defense Nuclear Nonproliferation (NA-20); (3) Office of Defense Nuclear Security (NA-70); and (4) Office of Personnel and Facilities Clearances and Classification (NA-74). NNSA Determination Letter (December 11, 2017). None of these offices were able to locate any responsive records in spite of the searches described below.

NA-10 conducted a one hour search of its computer databases, paper files, and email records using the search terms “Israeli Nuclear” and “WPN-136.” Memorandum of Phone Conversations between NA-10 and OHA (January 16, 2018); NA-10 Search Memorandum, NA-10 (October 26, 2017). Similarly, NA-20 performed a search of its shared network drive using the term “WPN-136.” Email Chain between NA-20 and OHA (January 29, 2018). NA-20 assured OHA “with certainty” that neither it, nor any of its sub-programs, would be in possession of any of the documents requested by the Appellant, as the topic of the request is “outside NA-20’s scope of work.” *Id.*

Upon receiving the request, NA-70 determined that the office within the organization that would be most likely to house such documents would be NA-74. Email Chain between OHA and NA-70 (January 29, 2018). Therefore, NA-70 forwarded the request to NA-74, which conducted a search of its email database, calendar entries, and stored memoranda using the keywords “Israel” and “WNP.”<sup>2</sup> *Id.*; Search Memorandum, NA-74 (October 25, 2017); Email Chain between OHA and NA-74 (January 17, 2018).

Based on the foregoing, we find that NNSA conducted a search reasonably calculated to uncover the records sought by the Appellant, and that the search was therefore adequate. Thus, we deny the present appeal.

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<sup>1</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at [www.energy.gov/oha](http://www.energy.gov/oha).

<sup>2</sup> NA-74 indicated that the key words “Israel” and “WNP” would have located responsive records containing the terms “Israeli” and “WNP-136” as well.

### **III. Order**

It is hereby ordered that the Appeal filed on January 8, 2018, by the Institute for Research: Middle Eastern Policy, Inc., FIA-18-0003, is denied.

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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Date: January 31, 2018