

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

In the Matter of National Security Archive                    )  
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Filing Date: September 28, 2018                            )     Case No.:     FIA-18-0033  
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Issued: October 10, 2018

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**Decision and Order**

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On September 28, 2018, the National Security Archive (Appellant) appealed a determination letter issued to it from the Department of Energy’s (DOE) Office of Public Information (OPI) (Request No. HQ-2018-00324-F). In the determination, OPI 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. OPI conducted a search and located two 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 December 4, 2017, OPI received a FOIA request from the Appellant, seeking the “release of any [DOE] reports or memoranda from 1987 concerning the status of the then recently negotiated US-Japan agreement on the peaceful uses of nuclear energy, including provision for plutonium reprocessing.” FOIA Request (December 4, 2017). In response, OPI assigned the request to DOE’s Office of History and Heritage Resources (MA-75).<sup>1</sup> Determination Letter (September 27, 2018). MA-75 conducted a search and located two responsive documents, which were released in their entirety. *Id.*

On September 28, 2018, the Office of Hearings and Appeals (OHA) received the Appellant’s challenge to OPI’s determination. FOIA Appeal (September 28, 2018). In the Appeal, the Appellant alleges that “neither of the documents are responsive” and “there should be, somewhere in [DOE’s] record, substantive documents on the status of the agreement.” *Id.* The Appellant requests that a further search be conducted. *Id.*

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<sup>1</sup> The Determination Letter indicated that the Office of History and Heritage Resources was denoted as MA-76; however, it appears that it is currently denoted as MA-75.

## II. Analysis

“Under the FOIA, an agency is obliged to make available to the public records that are reasonably described in a written request, if not exempt from disclosure.” *Kidder v. F.B.I.*, 517 F. Supp. 2d 17, 23 (D.D.C. 2007); 5 U.S.C. §§ 552(a)(3)(A), (b). “A request reasonably describes records if the agency is able to determine precisely what records are being requested.” *Tax Analysts v. Internal Revenue Serv.*, 117 F.3d 607, 610 (D.C.Cir.1997) (internal quotation marks and citation omitted).

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>2</sup>

MA-75 provided our office with information regarding the search it conducted to process the Appellant’s FOIA request. MA-75 conducted a manual and automatic search of its archived onsite records holdings and archived offsite records holdings. Memorandum of Conversation between MA-75 and OHA (October 3, 2018); Search Certification (December 14, 2017). Specifically, MA-75 explained that it utilized the keywords “Japan,” “peaceful uses,” and “plutonium reprocessing” in a search of its electronic database. Memorandum of Conversation between MA-75 and OHA (October 3, 2018). The search term “Japan” directed MA-75 to 209 boxes of material. *Id.* MA-75 was then able to use the database to examine the descriptions of folders within the boxes to determine if the boxes contained any responsive documents. *Id.* MA-75 explained that it used the year 1987, as specified in the FOIA request, to guide its search of the folders. *Id.* The search produced two unclassified documents, which were provided to the Appellant in their entirety. *Id.*

When OHA inquired into whether MA-75 knew of any other DOE offices that might maintain responsive records, MA-75 explained that its records holdings are fairly limited, constituting perhaps less than 1% of total DOE historical records. *Id.* MA-75 indicated that the majority of DOE historical records are either housed within the DOE office that originally handled the matter at issue or have been transferred to the National Archives and Records Administration (NARA). *Id.* With regard to the records that have been transferred to NARA, MA-75 explained that DOE no longer has control over those records. *Id.* MA-75 suggested that, based on the documents and time period relevant to the FOIA request, the DOE Office of International Affairs or the DOE Office of the Executive Secretariat may have responsive records. *Id.*

Based on the foregoing, we cannot find that a search reasonably calculated to uncover all relevant documents within DOE was conducted. As an initial matter, we conclude that MA-75 conducted an adequate search to discover any responsive documents that may exist within its records. However, it appears that there are additional offices within DOE that may have records responsive to the FOIA request that have not been searched. Accordingly, we find that an adequate search

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<sup>2</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).

was not conducted to find all departmental records responsive to the Appellant's request. Since MA-75 has already conducted an adequate search of its records, we will refer the matter to OPI for further processing.

### **III. Order**

It is hereby ordered that the Appeal filed on September 28, 2018, by the National Security Archive, FIA-18-0033, is granted.

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  
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Telephone: 202-741-5770 Fax: 202-741-5769  
Toll-free: 1-877-684-6448

Poli A. Marmolejos  
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