

United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Anatoly Blanovsky)
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Filing Date: November 8, 2018) Case No.: FIA-18-0036
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Issued: November 20, 2018

Decision and Order

On November 8, 2018, Anatoly Blanovsky (Appellant) appealed a determination letter issued to him from the Department of Energy’s (DOE) Office of the Inspector General (OIG) regarding his request (Request No. HQ-2018-01293-F) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. In the determination letter, OIG conducted a search and located no responsive documents. Determination Letter (October 25, 2018). The Appellant challenged the adequacy of the search. This Appeal, if granted, would require an additional search for responsive information

I. BACKGROUND

On April 23, 2018, the Appellant called the OIG’s Hotline and filed Complaint No. 18-0296-C, alleging that critical research errors were being ignored during federally funded research. Memorandum of Phone Call Between Karen Sulier, OIG, and Kristin L. Martin, Office of Hearings and Appeals (OHA) (November 13, 2018). After unsuccessful attempts to contact the Appellant, the OIG closed the complaint on April 25, 2018. *Id.* The OIG did not conduct any investigation of the complaint. *Id.*

On June 30, 2018, DOE’s Office of Public Information (OPI) received a FOIA request from the Appellant, seeking “[a]ny transcripts or records of communication between any DOE employees and the OIG in which [his] complaint #18-0296-C is the subject matter.” Determination Letter; Email Chain Between Karen Sulier, OIG, and Kristin L. Martin, OHA, (November 13–14, 2018) (Email Chain). In response, OPI assigned the request to the OIG. Assignment Memorandum from Llewellyn Smith, OPI, to Karen Sulier, OIG (July 2, 2018). The OIG conducted searches of its email and investigative case file systems using the casefile number as the keyword. Email Chain. No responsive documents were located and on October 25, 2018, the OIG issued a letter to the Appellant informing him of the search results. Determination Letter. On November 8, 2018, the OHA received the Appellant’s challenge to the OIG’s determination. Appeal (Nov. 8, 2018). The Appeal stated “[a]s any knowledgeable DOE employee can read the attached excerpt from

Einstein's manuscript to clearly see an inconsistency in it, I am writing to challenge the adequacy of the search for responsive documents related to my request.”¹ *Id.*

II. ANALYSIS

The FOIA requires agencies to make publicly available records that are reasonably described in a written request, so long as those records are not exempt from disclosure. *Kidder v. F.B.I.*, 517 F. Supp. 2d 17, 236 (D.D.C. 2007); 5 U.S.C. §§ 552(a)(3)(A), (b). Requesters may appeal the adequacy of the search an agency made in satisfying the request. In these appeals, the factual question raised is “whether the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document extant.” *SafeCard Servs., Inc. v. Sec. and Exch. Comm’n*, 288 U.S. App. D.C. 324, 926 F.2d 1197, 1201 (1991). *See also Hillier v. Cent. Intelligence Agency*, No. 16-cv-1836 (DLF), 2018 U.S. Dist. LEXIS 155414, at *18 (D.D.C. Sept. 12, 2018) (citing *SafeCard* with approval). In responding to a FOIA request, an agency need not conduct an exhaustive search of each of its record systems; rather, it need only conduct a reasonable search of “all systems ‘that are likely to turn up the information requested.’” *Ryan v. FBI*, 113 F. Supp. 3d 356, 362 (D.D.C. 2015) (citing *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). The standard of reasonableness depends on the facts of each case. *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 497 (D.D.C. 2017) (citing *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). A lack of responsive records does not indicate that a search was unreasonable. Indeed, if a “[c]ourt is satisfied with the method of search, it need not dwell on the sheer results.” *Conti v. United States Dep’t of Homeland Sec.*, 2014 U.S. Dist. LEXIS 42544, at *37 (S.D.N.Y. Mar. 24, 2014).

In *Am. Chemistry Council, Inc. v. U.S. Dep’t of Health and Human Servs.*, a requester challenged the adequacy of the search because the agency did not provide research data from a federal grantee in response to a general request for “records.” 992 F. Supp. 2d 56, 60–61 (D.D.C. 2013). The plaintiff had requested all records related to the research data. *Id.* at 63. The court stated that agencies “need not expand their searches beyond the four corners of the request, nor are they required to divine a requester’s intent.” *Id.* at 62 (internal citations omitted).

Though his appeal appears to expand on his original request for documents, the fact remains that the Appellant’s original request asked only for records about communication between DOE employees and OIG regarding his complaint. To the extent that the Appellant seeks to expand the scope of his original FOIA request through his appeal, we must decline to do so. *See Donna Deedy*, Case No. FIA-14-0001, *slip op.* at 3 (2014) (“[i]t is well established that an appellant is not permitted to use the administrative appeal process to expand the scope of a FOIA request.”) OIG was not required to search beyond the four corners of the request nor should it have divined that the Appellant was looking for any information beyond what he described.

The OIG performed searches of its email and case filing system using the keyword “18-0296-C” specified in the Appellant’s request. Because OIG knew at the time that the complaint was never investigated and was open for only a short time, it is reasonable for it to believe that an electronic

¹ The request contained a mathematical equation but did not specifically explain the relevance of the equation to his appeal. Given the context of the request, it is reasonable to interpret the Appellant’s request as describing only communications between DOE’s OIG employees and DOE’s non-OIG employees.

search using the case number was most likely to uncover the responsive records. Further, because OIG knew that the complaint had been closed for some time by the date of the Appellant's request, it is reasonable for it to believe that any responsive records of communications about the complaint would be either memorialized in the case file system or would be backed up through DOE's email retention program. We find that OIG searched the places most likely to contain the requested records and used the keyword most likely to locate those records. Accordingly, we hold that the OIG's search was adequate.

III. ORDER

It is hereby ordered that the Appeal filed on November 8, 2018, by Anatoly Blanovsky, FIA-18-0036, 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.

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 one's right to pursue litigation. OGIS may be contacted in any of the following ways:

Office of Government Information Services
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Web: <https://www.archives.gov/ogis> Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

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