United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Martin Pfeiffer	)	
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Filing Date: March 4, 2019	)	Case No.: FIA-19-0006
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Issued: March 15, 2019

Decision and Order

On March 4, 2019, Mr. Martin Pfeiffer (Appellant) appealed a Determination Letter issued by the Department of Energy's (DOE) National Nuclear Security Administration (NNSA) regarding Request No. FOIA 18-00233-R. In that letter, NNSA responded to a request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. NNSA released 18 pages of documents and stated that those were the records which were fully releasable in their entirety. Appellant asserts that the NNSA's search was not reasonably calculated to identify all of the records responsive to his request. As explained below, we deny the appeal.

I. Background

On July 11, 2018, the Appellant submitted a Freedom of Information Act (FOIA) request to NNSA requesting "[a]ll information security posters displayed by and at Sandia Corporation at what is now Sandia National Laboratories in Albuquerque, New Mexico, between and including the period of January 1, 1950 to December 31, 1969." FOIA Request (July 11, 2018). NNSA forwarded the request to the Sandia Field Office to conduct a search for responsive records. Determination Letter (Oct. 4, 2018). The Determination Letter did not describe the search performed. *Id.*

On March 4, 2019, the Appellant filed an appeal with the DOE's Office of Hearings and Appeals (OHA), challenging the adequacy of the agency's search. Though it was filed more than 90 days after the Appellant received the Determination Letter, the OHA, in its discretion, accepted the Appeal because the Determination Letter failed to provide information regarding appeal rights or processes.[1] The Appeal asserted that documentary evidence showed that an expansive effort had

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[1] The FOIA only requires notice of appeal rights and procedures in the case of an adverse determination. 5 U.S.C. 552(a)(6)(A)(i)(III)(aa) (2018). Because it released responsive records, NNSA may not have considered its determination adverse. However, the Appellant clearly did consider it so. The FOIA is to be interpreted in favor of disclosure whenever possible. *Ctr. for Pub. Integrity v. United States DOE*, 234 F. Supp. 3d 65, 73 (D.D.C. 2017);

been expended to create and disseminate informational security posters and that this evidence made it highly unlikely that only 18 such posters still exist. Appeal at 2 (March 4, 2019). The Appeal further asserted that the response to the FOIA request was identical to the response to another prior FOIA request by a different requester, even though that request had asked for very different records. The prior request had sought "old security, training, and motivational posters from the 1970s, and if possible, those same posters from the Atomic Energy Commission 1950-70s predating the DoE's founding." The Appeal argued that it was unlikely that the two diverging requests would yield identical results. Therefore, the Appeal argued, the NNSA's search was perfunctory or inadequate.

The Appellant submitted evidence with the Appeal that showed poster exchanges between Sandia and other government labs during the specified time period. Appeal Attachment 4 (March 4, 2019). He did not submit evidence that he provided this information to NNSA with his initial FOIA request. NNSA asserts that the Appellant specifically identified the location of the records sought as the Sandia Field Office (SFO) in his request when he requested records "displayed by and at Sandia Corporation at what is now Sandia National Laboratories in Albuquerque, New Mexico." Email from Roberto Marquez, NNSA, to Kristin L. Martin, OHA (March 7, 2019) (Marquez Email 1). NNSA states that SFO was the primary point of contact for records responsive to the request and that, had SFO known of or suspected the existence of other responsive records at other locations, it would have reported such in its response to NNSA. Memorandum of Telephone Conversation Between Roberto Marquez, NNSA, and Kristin L. Martin, OHA (March 11, 2019).

SFO performed a search for responsive records using the keywords "poster*, security information, security, secur* Sandia Corp, Sandia Corp* and secur* poster*" and a date range from January 1, 1950 to December 31, 1969. Email from Camelia Pearson, SNL FOIA Central, SFO, to Jennifer Bitsie, NNSA (March 7, 2019). The search included electronic searches of several databases, including one classified library catalog. *Id.* The responsive records located were identical to those located for a recent, unrelated FOIA request and SFO informed NNSA of that fact in its final response. *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. FBI.*, 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*, 926 F.2d 1197, 1201 (1991). 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, a search's adequacy "is determined not by the fruits of the

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Citizens for Responsibility & Ethics in Wash. v. United States DOJ, 854 F.3d 675, 681 (D.C. Cir. 2017) (internal citations omitted). Accordingly, the OHA accepted the appeal because the Determination Letter did not notify the Appellant of the 90 day deadline for filing an appeal.

search, but by the appropriateness of [its] methods." *Hodge v. FBI*, 703 F.3d 575, 579 (D.C. Cir. 2013) (citing *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)) (internal quotation marks omitted). 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*, OHA Case No. FIA-14-0030 (2014).

The Appellant's attachments to the Appeal provide somewhat compelling evidence that copies of posters displayed at Sandia may exist at other DOE locations. However, the Appellant did not submit this evidence with his original request and that information was not known to NNSA or SFO FOIA officers at the time of the request. Because the request sought only posters displayed at Sandia, NNSA reasonably identified SFO as the most likely location of responsive records. When SFO, as the organization primarily responsible for the posters, did not suggest that more posters responsive to the request may exist elsewhere, it was reasonable for NNSA to believe that no responsive documents were likely to exist anywhere other than SFO because there was no available evidence to suggest otherwise. Furthermore, while posters created at Sandia may have been exchanged with other laboratories, it would be nearly impossible to know if posters at other laboratories were ever displayed at Sandia, a parameter of the original FOIA request.

For the foregoing reasons, I find that NNSA was reasonable in its decision to limit its search to SFO. Accordingly, I find that NNSA conducted a search that was reasonably calculated to uncover the records responsive to the Appellant's FOIA request. Accordingly, NNSA's search was adequate.

III. Order

It is hereby ordered that the Appeal filed on March 4, 2019, by Martin Pfeiffer, No. FIA-19-0006, 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:

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