

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Dr. Ayyakkann Manivannan)
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Filing Date: March 11, 2019) Case No.: FIA-19-0009
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Issued: March 22, 2019

Decision and Order

On March 11, 2019, Dr. Ayyakkann Manivannan (Appellant) appealed four determination letters (Determination Letters) issued by the United States Department of Energy's (DOE) National Energy Technology Laboratory (NETL) regarding Request Nos. HQ-2018-01599-F, HQ-2019-00085-F, HQ-2019-00156-F, and HQ-2019-00242-F. Request No. HQ-2018-01599-F sought Appellant's medical records under the Privacy Act, 5 U.S.C. § 552a, as implemented by DOE regulations set forth at Part 1008 of Title 10 of the Code of Federal Regulations (C.F.R.). Appellant's other three requests were filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE regulations codified at 10 C.F.R. Part 1004. Those three requests concerned records related to allegations of misconduct against the Appellant and a subsequent investigation by NETL. NETL provided documents responsive to two of Appellant's requests. Appellant asserts that NETL's searches were not reasonably calculated to locate all of the information he requested. As explained below, we deny the appeal.

I. Background

Appellant's Privacy Act request sought records related to his visits to the onsite medical unit while he was employed at NETL. *See* Determination Letter from Ann C. Guy, Authorizing and Denying Official, NETL, to Dr. Ayyakkann Manivannan (September 26, 2018) (Privacy Act Determination Letter). On September 26, 2018, NETL informed Appellant that it had archived the requested records and transmitted them to the National Personnel Records Center (NPRC), and that NETL was therefore transferring Appellant's Privacy Act request to NPRC. *Id.* Shortly thereafter, NPRC sent Appellant a form indicating that the records he had requested had not been received by NPRC and that he should submit his request to NETL. NPRC Response Letter at 2 (October 12, 2018). Appellant subsequently resubmitted his request to NETL, which designated the request as HQ-2019-00376-F.

Appellant submitted request number HQ-2019-00085-F on October 22, 2018, seeking records concerning visits by an investigator and an individual who made allegations of misconduct against Appellant [the Individual] to NETL. By letter dated November 20, 2018, NETL responded to Appellant's request. Determination Letter from Ann C. Guy, Authorizing and Denying Official,

NETL, to Dr. Ayyakkann Manivannan (November 20, 2018) (First FOIA Request).¹ In its response, NETL provided records concerning the retention of the investigator and e-mails related to her visit to the facility. *Id.* However, NETL was unable to locate records related to any visits by the Individual to the facility. *Id.* In response to an inquiry from an OHA staff attorney, a NETL representative indicated that she had contacted NETL's contractor-operated security office to inquire about the visitor records requested by Appellant. According to the NETL representative, the security office could not locate the visitor records requested by Appellant and indicated that, if the requested records had ever existed, they would have been disposed of pursuant to the contractor's records retention policy prior to Appellant's request.

In request number HQ-2019-00156-F (Second FOIA Request), Appellant sought "Pinpointed records for the 'misconduct' reported in the SF-50 form issued to Dr. Manivannan. Any substantiating evidentiary records for the claims in the 'Notice of Proposed Removal' issued by Dr. Alman to Dr. Manivannan especially pinpointing records for "misconduct" of Dr. Manivannan." Appeal at 2. An OHA staff attorney contacted NETL regarding the status of its review of the Second FOIA Request. On March 14, 2019, NETL provided OHA with a copy of an e-mail message from NETL to Appellant requesting clarification as to what "pinpointed records" he had referred to in his Second FOIA Request. Electronic Mail Message from Ann C. Guy to Dr. Ayyakkann Manivannan (March 7, 2019). According to NETL, its search for records responsive to Appellant's Second FOIA Request is ongoing and cannot proceed until Appellant clarifies the nature of the records he is requesting. *See id.* Appellant does not dispute that he has not yet received a determination letter concerning his Second FOIA Request. Appeal at 2.

In request number HQ-2019-00242-F (Third FOIA Request), Appellant sought:

- (1) Records of Dr. Manivannan's individual sworn testimony and [the Individual]'s interview with [the investigator].
- (2) Records pinpointing Dr. Manivannan depriving [the Individual] credit rightly shared in the development of a patent and all published scientific journal papers. Release the patent and papers where [the Individual's] name is missing.
- (3) Records that Dr. Manivannan reported to NETL security that [the Individual] had no badge when she visited the site. Security statement/report is requested.
- (4) Records of slapping [the Individual's] face and kicking her after she fell.
- (5) Records of relationship with [the Individual] and her age was 18 during that time.

Third FOIA Request.

On January 24, 2019, NETL responded to Appellant's Third FOIA Request, and provided Appellant with a fourteen-page affidavit signed by the Individual in connection with a management-directed inquiry (MDI) and a one hundred twenty-eight-page transcript of an interview between Appellant and an investigator as part of the MDI. In his Appeal, Appellant asserts that NETL provided him with "unverifiable interview documents created by [an investigator] on Dr. Manivannan, not the requested sworn testimony of Dr. Manivannan with signature[, and that] NETL provided the testimony of [the Individual], not the requested interview

¹ In a letter to OHA dated February 25, 2019, Appellant asserted that he had not received NETL's determination letter concerning his First FOIA Request. By letter dated March 5, 2019, an OHA Administrative Judge provided Appellant with NETL's November 20, 2018, determination letter.

documents with [the investigator].” Appeal at 2. The Appeal also indicates that NETL did not provide any documents responsive to items two through five of his request. *Id.* NETL informed an OHA staff attorney that it considered items two through five of Appellant’s request to be arguments rather than requests for specific records, expressed that Appellant had already been provided with a complete copy of the MDI which contained all records NETL had concerning the Individual’s allegations, speculated that Appellant might actually seek records related to a subsequent investigation by a law enforcement organization, and indicated that NETL had previously suggested to Appellant that he contact that law enforcement organization for records concerning that matter.

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. FBI*, 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. IRS*, 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*, OHA Case No. FIA-14-0030 (2014).

In this case, we dismiss Appellant’s Appeal as it concerns his Privacy Act Request and his Second FOIA Request on procedural grounds, and dismiss his Appeal as it concerns his First FOIA Request and Third FOIA Request because NETL conducted a reasonable search.

A. The Privacy Act Request

An individual may appeal a denial of a Privacy Act request “within 30 calendar days after receipt of the denial.” 10 C.F.R. § 1008.11(a). Appellant’s Appeal is untimely with respect to the Privacy Act Determination Letter because the time for him to appeal lapsed in October 2018. Furthermore, Appellant’s Appeal of the Privacy Act Determination Letter is moot because NETL reopened the request as request number HQ-2019-00376-F. As Appellant’s Appeal of the Privacy Act Determination Letter is untimely and moot, we will dismiss the Appeal.

B. The First FOIA Request

We find NETL’s approach to searching for the records Appellant requested in his First FOIA Request reasonable. NETL contacted the security office for records related to visits by the investigator and the Individual to the facility. After learning that, pursuant to the contractor’s records retention policy, the records were no longer maintained by the security office, NETL located e-mail records related to the investigator’s visit and provided Appellant with copies of

those records. While the Appeal makes clear that the Appellant would prefer records of actual visits to the facility, the adequacy of a search is determined based upon the reasonableness of the methods used to conduct the search and not its results. *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). Accordingly, we conclude that NETL conducted a reasonable search and we therefore dismiss Appellant's Appeal.

C. The Second FOIA Request

Pursuant to 10 C.F.R. § 1004.8, a party may appeal the denial of a request for records in whole or in part, a determination that there are no documents responsive to the request, the denial of a request for expedited processing, or the denial of a request for waiver of fees. The OHA will dismiss an appeal if the office processing the FOIA request has not yet issued a decision. *Matter of William H. Payne*, OHA Case No. VFA-0141 at 3 (1996).² Appellant states in his Appeal that NETL has not yet responded to his Second FOIA Request and does not identify any other ground upon which he could base his Appeal. Appeal at 2. Accordingly, we find that Appellant's Appeal is not ripe as it concerns his Second FOIA Request, and we dismiss the Appeal.

D. The Third FOIA Request

Appellant's Third FOIA Request and Appeal from NETL's response to the Third FOIA Request appear focused on arguing that a "Notice of Proposed Removal" memorandum (Memorandum) issued to Appellant by NETL was unsubstantiated rather than constituting a *bona fide* effort to obtain records under the FOIA. *See* Appeal at 3 (indicating that the Appeal concerns "substantiating evidentiary records for the claims in the 'Notice of Proposed Removal' that [NETL] issued to Dr. Manivannan"). However, FOIA is not a mechanism through which to demand responses to questions or justifications for decisions, and agencies are not required to respond to such requests. *Thomas v. Comptroller of Currency*, 684 F.Supp.2d 29, 33 (D.D.C. 2010).

NETL provided Appellant with the records that its investigator prepared after her interviews with the Individual and Appellant as part of the MDI. The Appeal appears to challenge the propriety of the investigator's decision to organize the Individual's statement into an affidavit for her review and signature but to prepare a transcript of Appellant's interview without providing him with the opportunity to review the transcript for accuracy or to prepare his own statement. Appeal at 2-3. Whether or not the investigator should have organized both the Individual's and Appellant's statements in the same manner, NETL provided the records it received from the investigator to Appellant and we deem its search reasonable.

Items two through five of Appellant's Third FOIA Request seem to challenge the conclusions that NETL drew from the MDI in the Memorandum rather than to genuinely seek records. For example, item four of the Third FOIA Request requested that NETL provide "[r]ecords of slapping [the Individual's] face and kicking her after she fell." Appeal at 2. This request seems to refer to the Individual's allegations in the statement that NETL provided to Appellant in response to the Third FOIA Request, and to which NETL cited in the Memorandum. Memorandum at 3 (April 8, 2016). In his Appeal, Appellant asserts that "Original records supplying DIRECT PROOF of

² Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

MISCONDUCT must be provided supporting these statements in proposed removal.” Appeal at 3.

Appellant’s statement in the Appeal that he is entitled to “direct proof” for the conclusions in the Memorandum seems to argue that NETL should not have relied on the Individual’s account of events regarding her allegations of “slapping” and “kicking” without additional evidence, but does not identify any defect in NETL’s search other than to state that he is not satisfied with its results. As noted above, NETL asserts that Appellant is in possession of the results of the MDI upon which the Memorandum is based. To the extent that Appellant is dissatisfied with the conclusions that NETL drew from the MDI, and wishes to contest those conclusions, a FOIA appeal is not the proper channel through which to do so. Accordingly, we will dismiss Appellant’s Appeal.

III. Order

It is hereby ordered that the appeal filed by Dr. Ayyakkann Manivannan on March 11, 2019, No. FIA-19-0009, 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) of the FOIA, and 5 U.S.C. § 552a(g)(1) of the Privacy Act. 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 the right to pursue litigation. OGIS may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Web: ogis.archives.gov Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769
Toll-free: 1-877-684-6448

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