

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

In the Matter of:	Tom Secker)	
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Filing Date:	May 21, 2019)	Case No.: FIA-19-0016
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Issued: May 30, 2019

Decision and Order

On May 21, 2019, Tom Secker (Appellant) appealed a determination letter issued to him from the Department of Energy’s (DOE) Office of Public Information (OPI) regarding his request (Request No. HQ-2019-00781-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, OPI stated that it had referred the request to DOE’s Office of History and Heritage Resources (HHR) and the National Nuclear Security Administration (NNSA), and that these offices conducted a search and located no responsive documents. Determination Letter (May 21, 2019). The Appellant challenged the adequacy of the search. This Appeal, if granted, would require an additional search for responsive information

I. BACKGROUND

On April 22, 2019, OPI received a FOIA request from the Appellant, seeking “All records relating to DOE assistance to the 1998 film Godzilla (dir: Roland Emmerich). The DOE are credited at the end of the movie but I've been unable to find any more specific info on what support was provided by DOE.” OPI Determination Letter at 1 (May 21, 2019). OPI referred the request to HHR and NNSA for search. *Id.* HHR conducted manual and automated searches of archived onsite and offsite records using keywords “Godzilla” and “Roland Emmerich,” but located no responsive records. MA-75 Search Certification (April 24, 2019). NNSA searched all its previous FOIA responses and located no previous responses relevant to the request. Memorandum of Telephone Call Between Christina Hamblen, NNSA, and Kristin L. Martin, OHA (May 22, 2019) (Telephone Memorandum). On May 21, 2019, OPI issued a letter to the Appellant informing him of the search results. Determination Letter. Later that day, the OHA received the Appellant’s challenge to OPI’s determination. Appeal (May 21, 2019). The Appeal challenged the adequacy of DOE’s search, stating “Whatever the DOE's support to the film it seems impossible that a cabinet-level government agency could support an A-list Hollywood movie without generating any records relating to that support. It appears that a full search was not carried out in response to my request, and nothing was found, hence I must appeal this response (or lack thereof).” *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 Heffernan v. Azar*, 317 F. Supp. 3d 94, 110 (D.D.C. 2018). 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 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).

In *Citizens for Responsibility & Ethics in Wash. v. United States DOJ*, the requester challenged the adequacy of DOJ’s search for records related to a decision by the Attorney General because of discrepancies in the official’s schedule and because the records released by DOJ showed that “no paper trail exists of what the attorney general has represented was a careful, deliberate decision.” 292 F. Supp. 3d 284, 288 (D.D.C. 2018) (internal quotation marks omitted). The court rejected the requester’s assertion that DOJ’s failure to produce the number and type of documents that CREW expected to receive rendered its search inadequate. *Id.* Because senior officials often deviate from their official calendar and often receive verbal advice, the requester’s arguments did not rise to anything stronger than speculation, which was insufficient to determine that DOJ’s search was inadequate. *Id.*

Given the age of the records requested in the instant case, HHR was a logical choice for the location of potential records, as was a search of previous FOIA responses through NNSA. The keywords used to conduct HHR’s search were reasonably calculated to uncover any responsive records as they are the most descriptive parts of the Appellant’s request. The Appellant speculates that responsive records must exist because of DOE’s apparent involvement in a high-dollar film production. However, given the realities of records management in the federal government, the Appellant’s argument rises to nothing stronger than speculation. Indeed, DOE records of the type described are subject to records retention policies which mandate that such records be kept for several years, typically fewer than 10, and then destroyed. Memorandum of Telephone Call Between Records Management (IM-41) and Kristin L. Martin, OHA (May 23, 2019). Only records deemed to have permanent value are maintained indefinitely. Based on their relation to the scope of the DOE’s core mission, the records described in the Appellant’s request do not appear to have

permanent value, and it is highly unlikely that any such record would be maintained for 21 years. For the foregoing reasons, I find that DOE's search was adequate.

III. ORDER

It is hereby ordered that the Appeal filed on May 22, 2019, by Tom Secker, FIA-19-0016, 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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Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

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