



Department of Energy  
Washington, DC 20585

United States Department of Energy  
Office of Hearings and Appeals

In the Matter of Ron Walli )  
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Filing Date: March 6, 2020 ) Case No.: FIA-20-0021  
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Issued: March 19, 2020

**Decision and Order**

On March 6, 2020, Ron Walli (Appellant) appealed a Determination Letter issued to him from the Department of Energy’s (DOE) Oak Ridge Office (ORO) regarding a request (Request No. ORO-2020-00070-F (FIA-20-0018)) he 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. This Determination Letter was provided in response to a Decision issued by the Office of Hearings and Appeals (OHA) after the Appellant appealed ORO’s initial response to his request. In this Determination Letter, the ORO responded that it had conducted a search and found no documents responsive to the Appellant’s request. The Appellant challenged the adequacy of the search conducted. As explained below, we deny the Appellant’s appeal.

**I. BACKGROUND**

On October 7, 2019, the Appellant submitted a request for the following records:

The release of all information held by the DOE and/or UT-Battelle regarding any inquiries and subsequent decisions about a potential violation of the ‘Fairness of Opportunity’ requirement spelled out in the contract for UT-Battelle to manage Oak Ridge National Laboratory for DOE. This action would have taken place on or about Dec[ember] 8, 2016. I am specifically requesting the outcome and rationale if it was decided that UT-Battelle did not violate this requirement.

FOIA Request from Ron Walli at 1 (October 7, 2019).

On January 10, 2020, the ORO issued a Determination Letter indicating it had performed a search, and that it had not located any responsive records. *Ron Walli*, OHA Case No. FIA-20-0018 at 1 (2020) (*Walli*). The Appellant filed an appeal with OHA on January 13, 2020, challenging the adequacy of the search conducted. *Id.*

On January 28, 2020, OHA issued a remand order. In *Walli*, OHA indicated that there was no actual confirmation from UT-Battelle's Office of General Counsel (OGC) regarding how it conducted its search. *Id.* at 3. The OGC also did not indicate the type of search conducted. *Id.* As OHA was unable to determine whether an adequate search was conducted because of the lack of information, OHA determined the matter should be remanded for a further search. *Id.* OHA directed that "ORO . . . determine what type of search [the] OGC conducted and, depending on its findings, to conduct further processing of the Appellant's FOIA request." *Id.*

On March 6, 2020, ORO issued a second Determination Letter in response to the instructions provided in *Walli*. Determination Letter from Linda G. Chapman to Ron Walli at 1 (March 6, 2020). This Determination Letter states OGC "performed searches of its internal files, which are maintained electronically via a cloud-based filing system, working hardcopy files" and the e-mail accounts of two different attorneys for the phrase "Fairness of Opportunity" within the period beginning November 1, 2016 and ending January 30, 2017. *Id.* The Appellant filed an appeal within the allotted time, challenging the adequacy of the search. Appeal Letter Email from Ron Walli to OHA Filings at 1 (March 6, 2020). In an effort to show that the requested documents exist, the Appellant attached a series of emails to strengthen his position.\* *Id.* at 2-17.

## II. ANALYSIS

The OHA remanded the Appellant's FOIA request to ORO on January 28, 2020 for the purpose of ascertaining the type of search the OGC conducted, and if it was determined necessary, to further process the request. In responding to a request for information filed under the FOIA, 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). In these matters, the standard 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); *Truitt*, 897 F.2d at 542. Further, it has been established that when conducting a search to locate responsive documents, an agency "is not obligated to look beyond the four corners of the request for leads to the location of the responsive documents." *Kowalczyk v. Dep't of Justice*, 73 F.3d 386, 389 (D.C. Cir. 1996). 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 the instant case, ORO determined that its OGC would be among the most likely to possess documents responsive to the Appellant's FOIA request. Letter from Diana R. Stanley to Linda G. Chapman at 1 (February 11, 2020); FOIA Request at 1. The OGC searched its cloud-based system using the terms "Fairness of Opportunity" for the period beginning November 1, 2016 and ending

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\* We note that none of the emails provided by the Appellant included the term "Fairness of Opportunity." *Id.* at 2-17.

January 30, 2017. *Id.* The search of the electronic documents also covered other folder(s) potentially related to the request, and in addition, the Associate General Counsel for Labor and Employment and the Intellectual Property Managing Attorney conducted searches of their own email accounts in an effort to locate responsive documents. *Id.* These additional attorneys used the terms “Fairness of Opportunity” and searched the same time period as they would most likely have had responsive documents. *Id.*

Given the description of the searches conducted by OGC, including the locations of the searches, we believe the search was reasonably calculated to discover responsive documents should they have existed. The OGC search and the two additional attorneys’ search were reasonably determined to be the most likely sources of documents. Further, the Appellant clearly indicated the appropriate use of the search phrase “Fairness of Opportunity” in his request, which was used in the search for documents. Given the fact that “Fairness of Opportunity” was the search term specifically provided, it is likely that the use of this search term would have uncovered responsive documents had they existed.

### **III. ORDER**

It is hereby ordered that the Appeal filed on March 6, 2020 by Ron Walli, FIA-20-0021, is denied. This is a final order of the Department of Energy from which an aggrieved party may seek judicial review 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 situation, 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. OIGS may be contacted in any of the following ways:

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