

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

In the Matter of: Michael Ravnitzky)
)
Filing Date: March 25, 2020) Case No.: FIA-20-0022
)
)
_____)

Issued: April 1, 2020

Decision and Order

Michael Ravnitzky (Appellant) appealed a Determination Letter issued to him from the Department of Energy’s (DOE) Office of Public Information (OPI) regarding Request No. HQ-2020-00095-F. In that determination, OPI 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. No records were located. The Appellant challenged the adequacy of the search. In this Decision, we Order that the Appeal be denied.

I. BACKGROUND

On October 21, 2019, OPI received the Appellant’s FOIA request for “A copy of the meeting agenda, meeting minutes and handouts from each meeting of the Interagency [Energy] Management Task Force [IEMTF], which is led from Department of Energy’s Federal Energy Management Program (FEMP). You may limit this request to meetings held between April 10, 2019 and present.”¹ OPI referred the request to DOE’s Office of Energy Efficiency and Renewable Energy (EE) to perform a search for responsive records. EE’s search certificate lists DOE employee “CT” (anonymized for privacy). CT had personal knowledge that no Interagency Management Task Force meetings had been held in the time period specified. However, on October 29, 2019, EE still conducted a search of electronic records and employee email accounts, searching for the acronym for the organization. No records were found as a result of the search.

On March 9, 2020, OPI sent the Appellant its final determination regarding his FOIA request. In the letter, OPI explained that, although EE had completed a search, no responsive records were located and the request was closed. The Appellant timely appealed OPI’s determination, arguing that “[i]t seems a very odd and unlikely assertion that no records exist of these meetings.” He further argued that “[e]ven if there were in fact no records, then the letter did not provide any context to offer assurance that this no records response was plausible and accurate.”

II. ANALYSIS

¹ Though the Appellant wrote “Interagency Management Task Force” in his request, the IEMTF is the Interagency Task Force led by FEMP. The correct title is included for clarity.

An informed citizenry is a crucial element of a functioning democracy. The FOIA is intended to ensure such a citizenry, which is “needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). It is incumbent upon agencies to conduct a search that is “reasonably calculated to discover the requested documents....” *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).

A. Adequacy of the Search

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., American Oversight*, OHA Case No. FIA-19-0010 (2019).

The FOIA does not specify the method of search, only that it must be reasonable. *Toensing v. United States DOJ*, 890 F. Supp. 2d 121, 144 (D.D.C. 2012). The personal knowledge of agency employees may limit the scope or depth of a search where such personal knowledge reasonably leads the searcher to believe that such scope and depth are reasonably calculated to discover requested records. Though an agency “cannot fail to search at all based upon alleged personal knowledge,” such personal knowledge may guide a search such that a more limited scope is reasonable. *James Madison Project v. DOJ*, 267 F. Supp. 3d 154, 161 (D.D.C. 2017).

All DOE emails are archived and retained for at least seven years, regardless of deletion status in a user’s personal account. It is reasonable to assume that if EE had been engaged in meetings with the IEMTF, there would have existed emails or presentations with responsive records that included the search term “IEMTF.” Therefore, though the search certificate for the Appellant’s request lists a brief, perhaps even cursory, search of electronic records and employee email accounts, this search appears adequate when paired with employee CT’s personal knowledge that no meetings relevant to the request had taken place. *Cf. Toensing*, 890 F. Supp. 2d at 143 (“personal knowledge alone was inadequate; a search of some kind must be performed.”). Moreover, the Appellant’s assertion that a lack of responsive records is “odd” and “unlikely” is unpersuasive because an agency’s

“failure to turn up a particular document,” or an Appellant’s “mere speculation that as yet uncovered documents might exist, does not undermine the determination that the agency conducted an adequate search for the requested records.” *Nat’l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101, 152 (D.D.C. 2013).

B. Adequacy of the Determination Letter

The FOIA enumerates no requirement that an agency describe its search in detail or that it provide “context” in its initial response to a FOIA request. Federal courts often ask for detailed affidavits from the agency when deciding motions for summary judgment, but this does not establish any requirement for statutory compliance that is not enshrined in the text of the FOIA. *See, Oglesby v. United States Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); *Bates v. United States*, 118 S. Ct. 285, 290 (1997) (“[W]e ordinarily resist reading words or elements into a statute that do not appear on its face.”).

In its determination, OPI stated that EE had completed a search, that EE has started its search on October 29, 2019, and that no responsive records had been located. The information provided in the determination gives the requester the opportunity to challenge the adequacy of the search on factual, rather than speculative grounds, and provides a thorough description of the agency’s actions. While including the keyword searched would have provided even more information, the FOIA does not require an agency to describe every part of its process to a requester.

III. ORDER

For the foregoing reasons, I find that the search conducted by the Department of Energy was adequate, as was the initial agency determination provided to the Appellant on March 9, 2020. Accordingly, it is hereby ordered that the Appeal filed on March 25, 2020, by Michael Ravnitzky, No. FIA-20-0022, 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
National Archives and Records Administration
8601 Adelphi Road-OGIS, College Park, MD 20740
Web: <https://www.archives.gov/ogis> Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

Poli A. Marmolejos
Director
Office of Hearings and Appeals