

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

In the Matter of Mensur Omerbashich )  
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Filing Date: August 20, 2021 )  
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Case No.: FIA-21-0013

Issued: September 2, 2021

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**Decision and Order**

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On August 20, 2021, Mensur Omerbashich (Appellant) appealed a Determination Letter issued to him from the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA) regarding Request No. FOIA 21-00017-M. In that determination letter, NNSA responded to a request filed under the Freedom of Information Act (FOIA), 5. U.S.C. § 522, as implemented by the DOE in 10 C.F.R. Part 1004. NNSA released one document with redactions made pursuant to 5 USC § 552(b)(2) (Exemption 2), (b)(5) (Exemption 5), and (b)(6) (Exemption 6). In his Appeal, the Appellant apparently argues that the NNSA failed to complete an adequate search for all responsive records and that the document he received pursuant to his request was not provided to him in a proper format. In this Decision, we deny the appeal.

**A. Background**

On October 14, 2021, the Appellant submitted a FOIA request, asking for the following:

Vacancy Announcement: VirtualJF801-1301-STDEN4  
Position Title: General Engineer/Physical Scientist  
Series: 1301B  
Grade: 04

Requested records: any information I am entitled to that concerns the "Referred, not selected" decision, including the scoresheet as well as any other relevant information and documentation used in support of the decision to not select the obviously best candidate for job interview for an exempt position at the NNSA.

FOIA Request from Mansur Omerbashich at 1 (October 14, 2020).

On October 17, 2020, the Individual narrowed his request to “just the scoresheet plus any other documents up to the number of copies I am entitled to receive free of charge.” Email from Mensur Omerbashich to Delilah Perez at 1 (October 17, 2020).

NNSA's final determination letter regarding the Appellant's FOIA request was issued on August 19, 2021. Final Determination Letter from Christina H. Hamblen to Mensur Omerbashich at 1-3 (August 19, 2021). The Determination Letter indicated that the NNSA's Office of Human Resources, which was tasked with conducting the search for documents, located one document, entitled "Summary." *Id.* at 1. The document was provided to the Appellant with redactions made pursuant to Exemptions 2, 5, and 6. The Appellant asserted that he was basing his appeal on the following:

In your final response 20 August 2021, instead of releasing one list of candidates per location to the total number of lists matching the number of job locations – you released the total of one list of an unspecified location without any names indicated.

Appeal at 1.

After explaining that this format was more suitable for statistical purposes rather than personal use, he then went on to request "the list for each location [for which he] applied[.]" that his name as well as the location of the position be revealed as it appears throughout the document, and that it be accompanied by a legend or key to aid his understanding of the list. Appeal at 1.

## **B. Analysis**

### **Adequacy of Search**

In responding to a request for information filed under 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, and whether the search conducted was reasonable depends on the facts of each case. *See, e.g., In the Matter of Ayyakkannu Manivannan*, Case No. FIA-17-0035 (2017); *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)).

In its review of the present case, the Office of Hearings and appeals (OHA) requested that NNSA provide a copy of the search certificate for any searches performed pursuant to the FOIA request. The May 14, 2021, search certificate from the NNSA Office of Human Resources reveals that the original hiring manager in the selection, conducted a search of emails and documents in an NNSA shared drive and located a document entitled "scoresheet." Search Certificate from Norman H. Schwantes at 1 (May 15, 2021). Seeking further clarification regarding the search, OHA was informed that, as hiring matters inherently involve confidentiality concerns, hiring officials largely refrain from discussing such matters via electronic mail unless the discussion pertains to their final candidate selection. Memorandum of Telephone Conversation between Andrew Vogt and Noorassa Rahimzadeh at 1 (August 30, 2021). However, as a matter of course, the hiring manager in this selection stored selection documentation within a specific subfolder located in the NNSA

shared drive. *Id.* Accordingly, the hiring manager searched this subfolder item by item until he located the requested document. *Id.*

An examination of the responsive document reveals that the scoresheet pertains to the Washington D.C., vacancy announcement, and importantly, the NNSA's Office of Human Resources indicated that the Individual only applied to the Washington, D.C., position. Email from Delilah Perez to Noorassa Rahimzadeh at 1 (August 27, 2021). Given that NNSA conducted an electronic search for responsive documents in the only electronic database where the requested document(s) might exist and that the Appellant only applied for the Washington, D.C., vacancy, we find that the NNSA search was reasonably calculated to uncover responsive documents.

### **Format of the Summary Document**

In his Appeal, the Appellant argues that he should be provided with a key or legend to understand the information contained therein. In *Hudgins v. IRS*, the court states that “[u]nder FOIA an individual may only obtain access to records ‘written or transcribed to perpetuate knowledge or events.’” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C 1985) (citing *DiViaio v. Kelley*, 571 F.2d 538, 542–43 (10th Cir. 1978)). The court made clear that FOIA does not “require[] an agency to answer questions disguised as a FOIA request or to create documents or opinions in response to an individual’s request for information.” *Id.* at 21. As FOIA does not require the agency to provide answers to questions or to define terms, we find that the Appellant’s argument is unavailing.

### **Order**

It is hereby ordered that the Appeal filed on August 20, 2021, by Mensur Omerbashich, Case File No. FIA-21-0013, is denied in accordance with the explanation provided above.

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. § 522(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.

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