

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

In the Matter of Luis R. Comolli)
)
Filing Date: December 15, 2020) Case No.: FIA-21-0003
)
_____)

Issued: January 4, 2021

Decision and Order

On December 15, 2020, Luis R. Comolli (“Appellant”) appealed a determination letter issued by the Department of Energy’s (DOE) Office of Science-Bay Area Site Office (BASO) (FOIA Request No. CH-2021-00102-F). In that determination letter, BASO responded to Appellant’s request 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, in which Appellant sought a report of his radiation exposure. BASO indicated that it conducted a search and located no responsive documents. Determination Letter at 1 (November 9, 2020). Appellant’s present appeal challenges the adequacy of the search. As explained below, we deny Appellant’s appeal.

I. Background

On October 7, 2019, the Appellant submitted a FOIA request seeking the following information:

The radiation dose recorded during the operation of the microscope Jeol 3100 with an experimental electron accelerator, Room 160G, Donner Lab, Mail Stop 1, [Lawrence Berkeley National Laboratory] LBNL, from July 01[,] 2008 until August 31[,] 2014 I need to determine the [d]ose I received operating the instrument.

FOIA Request.¹

The Appellant filed his request with DOE’s Office of Science-Consolidated Service Center (SC-CSC) which maintains jurisdiction of federal government records located at LBNL. Determination Letter at 1. SC-CSC contacted BASO to search for responsive records. BASO referred Appellant’s FOIA request to the University of California (UC), the Management and Operating contractor for LBNL, to conduct a search for responsive records at LBNL. In its Determination Letter, BASO indicated that UC searched its radiation monitoring database and hard copy files, but it was unable

¹ Appellant filed his request as both a FOIA request and a Privacy Act request. However, regarding the Appellant’s Privacy Act request, the Determination Letter stated that since Appellant is neither a U.S. citizen nor is the U.S. his permanent residence, his request is being processed under FOIA. Determination Letter at 1.

to locate any records responsive to Appellant's FOIA request. *Id.*² In his appeal, Appellant alleged that BASO failed to perform an adequate search for responsive records. Appeal at 1.

A representative of OHA contacted SC-CSC to obtain additional information concerning the search performed by UC. Memorandum of Telephone Conversation between SC-CSC and OHA (December 22, 2020). The Radiological Control Manager and Group Leader ("Group Leader") of the Radiation Protection Group at UC-LBNL ("Radiation Protection Group"), and four members of his staff, conducted three searches for Appellant's radiation exposure records. E-mail from UC to SC-CSC (December 21, 2020). The three searches, described in detail below, included two searches of the UC-LBNL radiation monitoring database and one search of UC-LBNL's hard copy radiation monitoring records. *Id.*

The Donner building, where Appellant states he performed radiological work, is part of LBNL; all DOE activities within the Donner building are subject to the LBNL Radiation Protection Program. E-mail from UC-LBNL to LBNL Legal and SC-CSC (December 16, 2020); *see* Appeal at 2. This means that all radiation exposure records for DOE radiological work performed at the Donner building are stored in its radiation exposure monitoring database (the "Database"), which is maintained by the Radiation Protection Group. E-mail from UC-LBNL to LBNL Legal and SC-CSC (December 16, 2020). Since all radiation exposure records pertaining to the Donner building are maintained by the Radiation Protection Group, the Radiation Protection Group records are the most likely location for records responsive to the Appellant's FOIA request. E-mail from SC-CSC to OHA (December 17, 2020); E-mail from UC-LBNL to LBNL Legal and SC-CSC (December 16, 2020). There is no indication that there are separate personnel radiation exposure monitoring records at the Donner building. The Database can be searched using an individual's last name, and it can be searched separately by Employee ID number. Email from UC-LBNL to LBNL Legal and SC-CSC (December 21, 2020). The Group Leader and his four staff members searched the Database for Appellant's last name and used the date range January 1, 1980, to present. *Id.* The search yielded no results. *Id.* They then conducted a second search in the Database using the Appellant's Employee ID number and the same date range as in the first search, however, the search again returned no responsive records. *Id.* Finally, they conducted a third search in which they searched the hard copy files of radiation monitoring records. *Id.* Since the hard copy files are maintained by last name, they searched using Appellant's last name, but they did not locate any responsive records. E-mail from SC-CSC to OHA (December 17, 2020); Email from UC-LBNL to LBNL Legal and SC-CSC (December 21, 2020).

In addition, UC-LBNL and SC-CSC provided details regarding the microscope Jeol 3100 ("instrument") referenced in Appellant's FOIA request, and the room in which the instrument had been located, Room 160G. The Radiation Protection Group conducted radiological monitoring to determine radiation levels emanating at a distance of 5 cm from the instrument, and they also conducted radiological monitoring in Room 160G. Regarding the radiological monitoring of the instrument, the Group Leader stated, "all of our monitoring of the instrument described [in Appellant's FOIA request] indicated that exposure rates at 5 cm from the instrument were at background." E-mail from UC-LBNL to LBNL Legal and SC-CSC (December 16, 2020). The phrase "at background" means that the levels of radiation are too low to require individual

²The Authorizing Official for LBNL is BASO. Memorandum of Telephone Conversation between SC-CSC and OHA (December 22, 2020). As the Authorizing Official of the applicable site office, BASO is responsible for conducting the search for responsive records and issuing the determination letter. *Id.*

monitoring. Telephone Memorandum; *see* E-mail from UC-LBNL to LBNL Legal and SC-CSC (December 16, 2020). The Group Leader further stated, “[l]astly, we had installed passive area monitoring in [the room containing the instrument,] and those records indicate that [radiation] exposure rates [in the room] were at background [and] [t]he monitoring records were taken over many years.” *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. 5 U.S.C. §§ 552(a)(3)(A), (b). 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) (quoting *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). The reasonableness of a search depends on the facts of each case. *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 496 (D.D.C. 2017) (citing *Weisberg v. DOJ*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

A lack of responsive records does not necessarily 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.” *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). 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).

Given the description of the search conducted by the Group Leader and his staff in the Radiation Protection Group at UC-LBNL, we find that the search was reasonably calculated to discover responsive documents. As stated above, all radiation exposure records pertaining to the Donner building are maintained by the Radiation Protection Group. The Group Leader for the Radiation Protection Group was the person best positioned to identify the likely location of any responsive documents. The Group Leader and his staff searched the two locations most likely to uncover Appellant’s radiation exposure records if any existed. They conducted two searches in the Database and an additional search of their hard copy files. Moreover, the Appellant’s last name, Appellant’s Employee ID number, and a date range that included the dates referenced in Appellant’s request were appropriate parameters for the search. Given the nature of Appellant’s request, the search would have likely uncovered responsive documents.

Finally, the Group Leader and SC-CSC provided additional information derived from the Radiation Protection Group’s radiological monitoring of both the instrument and the room containing the instrument, Room 160G. Since radiation exposure rates at 5 cm from the instrument and in the room indicate that there were no radiation fields above background, the levels of radiation were too low to require individual monitoring. This information provides support for the absence of individual radiation exposure records for Appellant. Accordingly, we conclude that UC conducted a search reasonably calculated to uncover the documents sought by Appellant, and the search was therefore adequate.

III. Order

It is hereby ordered that the appeal filed on December 15, 2020, by Luis R. Comolli, Case No. FIA-21-0003, 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 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

Poli A. Marmolejos
Director
Office of Hearings and Appeals