

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

In the Matter of Rowland Hume)	
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Filing Date: July 11, 2022)	Case No.: FIA-22-0022
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Issued: July 25, 2022

Decision and Order

On July 11, 2022, Rowland Hume (Appellant) appealed a final determination letter (Determination Letter) issued by the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA), dated July 8, 2022. The Determination Letter responded to Request No. 21-00018-DD, a request filed by the Appellant under the Freedom of Information Act (FOIA), 5 U.S.C. § 522, as implemented by the DOE in 10 C.F.R. Part 1004. The Determination Letter from NNSA informed the Appellant that no responsive documents had been located. The Appellant challenges the adequacy of the search. In this Decision, we deny the appeal.

I. Background

On July 6, 2020, Appellant submitted the FOIA request to the DOE. The request asked DOE to provide:

Any/all records, files, notes, correspondence, information regarding an incident involving the DOE & OST Date march/April 1997. Joint operation of the recovery/retrieval and transport of a downed or crash hazardous object in the country of Peru.

Determination Letter from Christina H. Hamblen to Rowland Hume at 1 (July 8, 2022).

NNSA reached out to the Office of Secure Transportation (NA-15), and NA-15 conducted a search for the requested records in the database where all mission records are stored, Transportation Resources Integrated Planning Suite (TRIPS). *Id.* The NNSA issued a final determination letter to the Appellant on February 18, 2022. *Id.* On February 23, 2022, the Appellant filed an appeal. *Id.* In his February 23 appeal, the Appellant “expressed concern that only the [Office of Secure Transportation (OST)] was searched” and he supplemented the initial request with the following:

Any/all records, files, notes, correspondence, information regarding an incident involving the DOE & OST Date march/April 1997. Joint operation of the recovery/retrieval and transport of a downed or crash hazardous object in the country of Peru. And [n]ew info to help with my FOIA request - the DOE appeared in Hazmat suits, so it was likely DOE(s) [Nuclear Emergency Support Team (NEST)]; ERT, ART team probably included

[Radiation Emergency Assistance Center/Training Site (REAC/TS)] and other sections in ERT/ART(s) or other DOE emergency response teams in 1997 (maybe ones undisclosed to the public). Response was to an “urgent call for assistance” possibly international or a US dept operating internationally.

Id. NNSA withdrew the final determination letter that was issued on February 18 to resume a search for documents, and accordingly, the Office of Hearings and Appeals (OHA) issued a letter on March 3, 2022, dismissing the appeal as moot. *Id.* at 2; Dismissal Letter from OHA to Roland Hume at 1 (March 3, 2022). NNSA reevaluated the request and sent it to the NNSA Office of Counterterrorism and Counterproliferation (NA-80). Determination Letter at 2. NA-80 conducted a search of its own records and contacted REAC/TS to conduct a search. *Id.* REAC/TS searched its database using the following search terms: “March 1997,” “April 1997,” “downed,” “crash,” “hazardous object,” “Peru,” “hazmat suits,” and “urgent call for assistance.” *Id.* No responsive records were found. *Id.*

NNSA also contacted NA-NV, “which has oversight responsibility for the Nevada Test Site[.]” *Id.* NA-NV conducted a search of its own records and asked their contractor, Mission Support and Test Services (MSTS), to conduct a search as well. *Id.* at 2. NA-NV and MSTS searched the Nuclear Testing Archive, Local Records Center, and Emergency Services and Operations Support using the following terms: “Peru” and “April 1997,” “Peru” and “March 1997,” “Peru” and “1997,” “Peru” and “Crash” and “Hazardous Object,” “Peru” and “Downed” and “Hazardous Object,” and “Peru” and “Object.” *Id.* Neither NA-NV nor MSTS located any responsive records. *Id.*

On July 8, 2022, NNSA send the Appellant a final Determination Letter informing the Appellant of the searches conducted and the results they yielded. *Id.* at 1. In a timely filed appeal, the Appellant argues that NNSA told him it would conduct a proper search. Appeal Email from Rowland Hume to OHA at 1 (July 11, 2022). The Appellant goes on to state that in the Determination Letter, the NNSA stated that they did not have records relating to the NEST deployment in 1997, as the database was not created until 2003. *Id.* The Appellant took issue with this assertion, as he believes it directly contradicted a prior statement from the NNSA analyst, which indicated that the NNSA did have such records in its possession. *Id.* at 1-3. Accordingly, the Individual asked that a new search be conducted. *Id.* at 3 We construe this argument to be a challenge to the adequacy of the search that was conducted for the requested NEST records.

II. Analysis

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. “The adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Jennings v. Dep’t of Justice*, 230 F. App’x 1, 1 (D.C. Cir. 2007) (internal quotation marks omitted). Whether the search conducted was reasonable depends on the facts of each case, and if it is evident

that the search conducted was in fact inadequate, we do not hesitate to remand a 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)).

As an initial matter, the Appellant takes issue with what he feels are contradictory statements from the FOIA analyst. He argues that in a January 27, 2022, email exchange that took place prior to the issuance of the July 8 Determination Letter, the FOIA analyst informed him “that the NNSA did hold” the requested NEST records. Appeal at 1. He then cited the July 8 Determination Letter, which indicated that “[t]he database that NNSA uses to track nuclear/radiological incidents was not created until 2003; therefore, records do not exist for incidents and NEST deployments that occurred prior to 2003.” Determination Letter at 2; Appeal at 1-2.

After reviewing the facts of this case, we do not agree with the Appellant’s characterization of the exchange. According to the January 27 email, the Appellant had inquired as to whether the NNSA held DOE emergency response team records from 1997, as the NNSA was not yet in existence in 1997. Email from Arianna Gallegos to Rowland Hume at 1 (January 27, 2022). In her response, the FOIA analyst confirmed that the NNSA was not in existence in 1997; however, the agency did have site offices operating at that time. *Id.* at 1. Accordingly, “any potentially responsive records would still be in their possession, thus falling under the jurisdiction of the NNSA post establishment.” *Id.* The FOIA analyst did not provide an unequivocal statement that the NNSA possessed the requested records. She also did not guarantee that the databases at the disposal of the site offices possessed the requested records. Rather, she merely provided a generic statement indicating that if there are any responsive documents, the site offices that were operating in 1997, and now under NNSA jurisdiction, may still have documents predating the establishment of the NNSA in their possession.

Further elucidating the statement made in the Determination Letter, an examination of a memorandum that NA-80 provided the FOIA analyst indicates that because the database used to track nuclear/radiological incidents was not created until 2003, “easily accessed records do not exist” regarding “incidents and NEST deployments that occurred prior to that date[.]” Memorandum from Dallas Boyd to Ariana Gallegos at 1 (June 1, 2022).

To gain further clarification regarding the search that was conducted for records pertaining to NEST deployments in 1997, OHA reached out to NA-80. OHA discovered that NA-80 had asked NA-84 to conduct the searched for responsive documents, and in addition to the searched outlined above, NA-84 was directed to search the Asset Readiness Management System (ARMS) database for responsive records. Memorandum of Telephone Conversation between OHA and Dallas Boyd at 1 (July 21, 2022) (Telephone Memorandum). The ARMS database was chosen for the fact that it is where NEST deployments are memorialized. *Id.* It was further discovered that NA-84 searched its database using the same search terms used to search the REAC/TS database. Email from Dallas Boyd to OHA at 1 (July 21, 2022). NA-80 also directed the search of the NEST compendium, which is an “unofficial NEST history project.” Memorandum from Dallas Boyd to Ariana Gallegos at 1; Telephone Memorandum at 1. The search of the compendium did not yield any responsive documents. *Id.*

Our review of the search shows NNSA “conduct[ed] a search reasonably calculated to uncover all relevant documents.” *Truitt*, 897 F.2d at 542. The facts recounted above indicate that NNSA made a good faith effort, using a thorough list of search terms and searching all offices where records could reasonably be expected to be found. Accordingly, we find that NNSA’s search was reasonable and used appropriate methods.

III. Order

It is hereby ordered that the Appeal filed on July 11, 2022, by Rowland Hume, FIA-22-0022, 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. § 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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