

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

In the Matter of Michael Ravnitzky )  
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Filing Date: September 9, 2022 )  
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Case No.: FIA-22-0028

Issued: September 23, 2022

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**Decision and Order**

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On September 9, 2022, Michael Ravnitzky (Appellant) appealed a final determination letter (Determination Letter) issued by the Department of Energy’s (DOE) Oak Ridge National Laboratory (ORNL/UT-Battelle), dated September 8, 2022. The Determination Letter responded to Request No. ORO-2022-00745-F, 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 ORNL 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 April 17, 2022, Appellant submitted his FOIA request to the DOE. The request asked the DOE to provide:

A copy of [each] red team review of the [US International Fusion Energy Organization (US ITER)] program chaired by Les Price. According to a press notice dated December 12, 2019, Les Price chaired several Red Team reviews of US ITER since retiring from DOE. See: <http://www.qedfusion.org/FPA/ARC19/fpn19-49.shtml>[.] You may omit from the scope of this request the most recent Red Team review of the US ITER program, which was the subject of a previously processed FOIA request at the Oak Ridge Office.

FOIA Request from Michael Ravnitzky at 1 (April 17, 2022).

ORNL/UT-Battelle conducted the search for responsive documents, as the US ITER project is managed by ORNL. Letter from Diane R. Stanley to Linda G. Chapman at 2 (September 15, 2022). Accordingly, “ORNL manages all U.S. technical contributions to the ITER Project and maintains all records related to that scope.” *Id.*

The Appellant was notified in a September 8, 2022, letter that no responsive records were located. Determination Letter from Linda G. Chapman to Michael Ravnitzky at 1 (September 8, 2022). As stated above, the Appellant filed a timely appeal on September 9, 2022.

In his appeal, the Appellant indicated that “[t]he policy and practice of the US ITER TEAM is to hold Red Team Reviews.” Appeal Email from Michael Ravnitzky to OHA Filings at 1 (September 9, 2022) (hereinafter cited as “Appeal”). The Appellant cited a press release, which he admitted was not published by the DOE, that indicated Les Price chaired the reviews since his retirement. Appeal at 1. He then stated that this press release “constitutes exceptionally strong evidence and indication that there were multiple US ITER Red Team Reviews” and that the “presumption” that such reviews were held “as not been overcome[]” as “[t]he [Determination Letter] did not explain the locations that had been searched to counter this presumption.” Appeal at 1. To illustrate his assertion that Red Team Reviews are held, the Appellant cited a document he stated was produced by the DOE which referenced a Red Team Review panel. Appeal at 1.

The Appellant also asserted that the response provided was “curiously overspecific [*sic*],” in that the Determination Letter indicated that ORNL was unable to locate “[R]ed [T]eam reports chaired by Les Price.” Appeal at 2. The Appellant stated that the phrasing in the Determination Letter suggests that if the search was particularly restrictive, then the search would naturally fail to yield any meaningful results.

The Appellant also stated that the search may have not been conducted by an office that was entirely objective. Appeal at 2. In making this assertion, the Appellant indicated that he was informed that UT-Battelle was instructed “not to respond to any requests regarding ITER.” Appeal at 2.

In summation, the Individual stated that he “was owed a more careful and thorough search[]” as “[t]here was not intrinsic indication in the response letter that a careful and through search was done.” Appeal at 2. We construe the Appellants assertions to be a challenge to the adequacy of the search that was conducted.

## 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 press release that the Appellant cited in his Appeal was released by Fusion Power Association, which is “not directly affiliated with [ORNL], DOE, or US ITER.” Letter from

Diana R. Stanley to Linda G. Chapman at 1-2 (September 15, 2022). A press release issued by ORNL on the matter did not mention Les Price.<sup>1</sup> *Id.* at 2.

Regarding the Appellant's assertion that the search was conducted by an office that was not entirely objective, we believe this conclusion may have been the result of a misunderstanding. The Appellant received an email from ORNL regarding another FOIA request that he had filed. Email from Linda G. Chapman to OHA at 1 (September 15, 2022). In that email, the FOIA Officer indicated that "the office at HQ which is involved in the ITER project has asked UT-Battelle not to respond to any requests regarding ITER, because they have concerns." Email from Linda G. Chapman to Michael Ravnitzky at 1 (March 3, 2022). The office to which the FOIA Analyst was referring was the Office of Fusion Energy Sciences (FES). Email from Linda G. Chapman to OHA at 1 (September 15, 2022). The FOIA Officer clarified that FES is also enmeshed with the US ITER project, which means that "the release of some documents can be made by UT-Battelle and some documents will need to be released by FES." *Id.* FES had some concerns regarding the documents that ORNL/UT-Battelle was releasing. *Id.* The FOIA Officer further clarified that that FES did not indicate that ORNL/UT-Battelle was prohibited from processing such requests entirely. *Id.* The concerns FES had regarding the matter were resolved, and ORNL continued processing requests pertaining to US ITER. *Id.*

To gain further clarification on the search that was conducted, OHA reached out to the ORNL FOIA Coordinator. OHA discovered that the search for responsive documents was conducted in the iDOCS system, which is where the ITER Project documents are maintained. Email from Diana Stanley to OHA at 1 (September 21, 2022). The iDOCS system contains "all official documents from May 2006" through the present. *Id.* Any documents before 2006 are maintained in the "inactive storage holding area[.]" and are outside the scope of the FOIA request, as "[R]ed [T]eam review type documents would not exist in this inactive collection of records[.]" *Id.* In searching the iDOCS system, search terms were entered into system fields and searched separately without any parameters set for the date. *Id.* The search term "red team" was entered into the "title field" and "Price" was entered into the "author" and "from" fields. *Id.* OHA also discovered that the individuals responsible for performing the search "searched other ways [in iDOCS] as well[.]" but could not recall the specifics on those searches." *Id.*

When the aforementioned searches did not yield any results, the individuals performing the searches made contact with "another US ITER staff member who searched for working documents" that were not in the iDOCS system. *Id.* That staff member conducted a search on SharePoint and relevant electronic group folders. *Id.* The search terms "red," "team," and "review" were utilized in an effort to uncover whether Les Price had chaired any such meetings. *Id.* The facts recounted above indicate that ORNL/UT-Battelle made a good faith effort, using a thorough list of search terms and searching all locations where records could reasonably be expected to be found. Accordingly, we find that the search was reasonable and that ORNL/UT-Battelle used appropriate methods.

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<sup>1</sup> Kathy McCarthy to Join ORNL as US ITER Project Office Director (November 25, 2019), <https://www.ornl.gov/news/kathy-mccarthy-join-ornl-us-iter-project-office-director>.

### III. Order

It is hereby ordered that the Appeal filed on September 9, 2022, by Michael Ravnitzky, FIA-22-0028, 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.

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 your right to pursue litigation. You may contact OGIS in any of the following ways:

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