



Department of Energy
Washington, DC 20585

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Saurabh Dixit)
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Filing Date: December 12, 2022)
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Case No.: FIA-23-0005

Issued: December 22, 2022

Decision and Order

On December 12, 2022, Saurabh Dixit (Appellant) appealed a determination letter dated November 17, 2022 issued by the Department of Energy’s (DOE) Oak Ridge Office (ORO). The determination letter responded to Request No. ORO-2023-00072-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 Appellant challenges the adequacy of the search that was conducted for records responsive to his request. In this Decision, we deny the appeal.

I. Background

On September 1, 2022, Appellant submitted a FOIA request to DOE’s Office of Public Information (OPI) requesting:

1. Procedure No SAP -950 dated September 2020 talks about "Restricted party screening" at page no 2 and "entities of concern" at page no 3. Kindly provide the list of "Restricted party" and entities of concern. The information may be available with CI team of PNNL [Pacific Northwest National Laboratory].
2. Kindly provide the list of organizations having embargoes. Which US Department publishes this list?
3. Kindly provide the list of restrictions imposed by PNNL on these organizations (which has an embargo). Is PNNL following the order/guidelines issued by any other US department/departments regarding these restrictions? If yes, Kindly provide the name and copy of the document.
4. Kindly provide the list of restrictions on a person (Foreign national) who has a past association in the following capacity with these organizations.

- (I) employee
- (II) Contractor
- (III) Student or Intern

Is PNNL following the order/guidelines issued by any other US department/ departments regarding these restrictions?

FOIA Request from Saurabh Dixit at 1 (Sept. 1, 2022). On September 2, 2022, OPI sent the Appellant a letter acknowledging his request and informing him that OPI would send him another letter if more information was needed to process his request and/or to inform him where the request was assigned to conduct a search for responsive documents. Acknowledgment Letter Email from Alexander Morris to Saurabh Dixit (Sept. 2, 2022). OPI sent the Appellant a letter informing him that his request had been transferred to ORO on September 10, 2022. Email from Jennifer Goldsmith to Saurabh Dixit (Sept. 10, 2022).

ORO sent the Appellant an email acknowledging his request on October 18, 2022. Email from Linda Chapman to Saurabh Dixit (Oct. 18, 2022). On that same day, ORO sent the request to PNNL. PNNL Response to Appeal from Linda Chapman to OHA Filings at 1 (Dec. 15, 2022). PNNL contacted subject matter experts (SMEs) in the Safeguards and Security office and the Technology Protection and Export Control office, which were the two offices where PNNL thought records were most likely to be found. *Id.* The SMEs in those offices performed a search using a publicly available database that is maintained by another agency and found no responsive records. *Id.* Based on their personal knowledge and experience, the SMEs also stated that there would not be any responsive records generated by PNNL because PNNL does not maintain its own lists of “entities of concern,” embargoed organizations, restrictions on embargoed organizations, or restrictions on former associates of embargoed organizations. *Id.* When PNNL needs to screen an individual for access, they utilize the database that was provided to the Appellant, which does not generate any records. Memorandum of Telephone Conversation between Elizabeth Rosso, Steven Cooke, Linda Chapman, and Erin Weinstock (Dec. 20, 2022). Any information that comes from that search is then communicated to relevant offices through telephone conversations. *Id.*

On November 17, 2022, ORO sent the Appellant a final determination letter, which provided the Appellant with a link to a publicly available database that addressed some of his requests and explained that PNNL had not found any records that were responsive to his request. Determination Letter from Linda Chapman to Saurabh Dixit at 2 (Nov. 17, 2022). The letter also explained that FOIA does not require an agency to answer questions about agency operations, but only requires a search for responsive records. *Id.*

Appellant timely appealed the adequacy of the final determination letter on December 12, 2022. Appeal Letter Email from Saurabh Dixit to OHA Filings at 1 (Dec. 12, 2022). The Appellant argues that ORO’s search was inadequate.¹ *Id.*

II. Analysis

When responding to a request for information filed under FOIA, an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Dep’t of State*, 897 F.2d 540,

¹ The Appellant specifically states: “I want to appeal against the decision due to the lack of adequacy and authenticity of the information provided.” Appeal at 1. As there are no grounds for a FOIA appeal based on “authenticity,” we interpret this statement as an appeal as to the adequacy of PNNL’s search.

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). If a search was conducted reasonably depends on the facts of each case, and if it is evident that a search was conducted inadequately, we do not hesitate to remand a case back to the agency. See, e.g., *In the Matter of Ayyakkannu Manivannan*, Case No. FIA-17-0035 (2017)²; *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)).

It should also be noted that FOIA does not require that agencies answer questions or generate new records. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 162 (1974).

Here, PNNL determined the offices most likely to have records related to the Appellant’s request and had them complete a search of the publicly available database run by another federal agency. This search did not find any responsive records. PNNL’s SMEs in these offices stated that their offices do not have records responsive to the Appellant’s request. They explained PNNL does not generate records of the type the Appellant was seeking and provided a reasonable explanation as to why PNNL does not have those records. In our reading of the final determination letter, PNNL’s assertion that they “do not create or maintain their own lists” communicated that PNNL does not maintain records relating to which organizations and foreign nationals may face restrictions and also that PNNL does not maintain a list of the types of restrictions that may be imposed on foreign nationals who are associated with an organization listed in the public database. Because PNNL is not required to generate new records in response to a FOIA request, they need not attempt to create these records.

Accordingly, we find that PNNL used appropriate methods to complete its search for this request.

III. Order

It is hereby ordered that the Appeal filed on December 12, 2022, by Saurabh Dixit, FIA-23-0005, 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:

² Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

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