

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

In the Matter of Karla Todd)
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Filing Date: December 27, 2022) Case No.: FIA-23-0006
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Issued: January 19, 2023

Decision and Order

On December 27, 2022, Karla Todd (Appellant) appealed a determination letter issued by the Department of Energy’s (DOE) Office of Public Information (OPI), regarding the Appellant’s Request No. HQ-2022-00854-F filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. In the determination letter, the OPI indicated it assigned the Appellant’s FOIA request to DOE’s Office of Environment, Health, Safety and Security (EHSS) and the National Nuclear Security Administration (NNSA) to conduct a search for responsive documents, and neither office located any documents responsive to the request. Determination Letter from Alexander Morris to Karla Todd at 34 (September 27, 2022). The determination letter also indicated the Appellant was identified as a “commercial requestor,” subject to fees associated with the FOIA request, but the Appellant was not charged any fees. Determination Letter at 34. In this appeal, the Appellant challenges the adequacy of the DOE’s search and her designation as a “commercial” requester. In this decision, we deny the appeal.

I. Background

On May 12, 2022, the Appellant submitted a FOIA request to the DOE, seeking “information about the Department of Energy’s activities and those of it’s affiliated entities” involving herself. FOIA Request from Karla Todd at 1 (May 12, 2022). The Appellant sought records from “the entirety of the Department of Energy, including but not limited to the DOE’s departmental elements and organizations (i.e. OSTI, NNSA, HTM, etc.); employees; and affiliated entities,” “DOE contractors and other funding recipients”; “parties to other DOE agreements”; and “entities the DOE reimburses.” *Id.* at 1. The “information” the Appellant sought included “all written documentation and notes; all digital and electronic information; all recordings (e.g. audio, visual, other); all images;” and “all other data.” *Id.* at 3. The Appellant requested that the DOE “check all dates from November 24, 1958, through the current date with an emphasis on [sic] century.” *Id.* at 3. Lastly, the Appellant’s FOIA request included 28 questions she asked the DOE to answer about her participating in human experiments. *Id.* at 3-8.

On May 17, 2022, the DOE OPI issued an interim response to the Appellant, which notified the Appellant that her FOIA request, as written, did not reasonably describe the records she sought. Interim Response Letter from Alexander Morris to Karla Todd at 2 (May 17, 2022). The interim response letter also instructed the Appellant to restructure her original request by providing

“further information regarding individuals, offices or departments, any subject matter, topic, or context for your request, along with any connection or affiliation to individuals, or offices within DOE or any DOE national laboratories.” Interim Response Letter at 3.

On June 10, 2022, a FOIA Analyst at the DOE OPI contacted the Appellant to assist her in narrowing her request. Email from Alexander Morris to Diane Miles (December 28, 2022) at 41, 50.

On June 15, 2022, the Appellant submitted a revised FOIA request to the DOE. Revised FOIA Request from Karla Todd at 1-18 (June 15, 2022).

In her revised request, which totaled 18 pages and sought three categories of records, the Appellant sought “all records pertaining to the category of human research,” or experiments conducted or sponsored by “the DOE or its affiliated entities,” in which she was involved. Revised FOIA Request from Karla Todd at 1. The Appellant’s request also sought records of experiments that involved (1) the installation, implantation, or attachment [on or in her body] of the following: medical devices; quantum dots; nanoparticles; microelectronic-mechanical systems (MEMS); computer chips; biometrics; (2) the emission, transmission, or conversion of energy from her or her property; (3) and copies of any consent forms she signed. The Appellant sought records dated from 2000 to 2022, and involving medical facilities where she indicated she had surgeries in Vermont, Massachusetts, New Hampshire, and Texas. Revised FOIA Request from Karla Todd at 1-6.

The Appellant’s revised FOIA request also sought “all records pertaining to the category of animal research...conducted by or sponsored by the DOE or its affiliated entities and involving myself.” Revised FOIA Request from Karla Todd at 6. The Appellant’s request also sought records of experiments that involved: animal-machine interfaces; animal testing; the installation, implantation, or attachment of spheroids, processors, computer chips, or simulators; all forms of radiation; and “the use of or modification of my body or part(s) of my body (internally, externally, or otherwise).” Revised FOIA Request from Karla Todd at 6-11. The Appellant sought records dated from 2000 to 2022, and involving medical facilities in Vermont, Massachusetts, New Hampshire, and Texas. Revised FOIA Request from Karla Todd at 6-11.

The Appellant’s revised FOIA request also sought “all records pertaining to the category of “military/defense or intelligence activities involving human-machine interfaces...conducted by or sponsored by the DOE or its affiliated entities and involving myself.” Revised FOIA Request from Karla Todd at 12. The Appellant’s request also sought records of experiments that involved: “environmental alterations when human are the subjects being tested”; the installation, implantation, or attachment of fiber-optic or biosensors; spheroids, quantum dots, transceivers, controllers, computer chips; and the transfer or transmission of data, software, or commands. Revised FOIA Request from Karla Todd at 6-17. The Appellant sought records dated from 2000 to 2022, and involving medical facilities in Vermont, Massachusetts, New Hampshire, and Texas. Revised FOIA Request from Karla Todd at 6-17.

Lastly, the Appellant submitted multiple variations of her name, her social security number, her date of birth, her current address, and a list of addresses and locations where she previously lived, including Los Angeles, California and various cities in Texas. Revised FOIA Request from Karla Todd at 18.

On September 27, 2022, the DOE OPI notified the Appellant that it assigned her FOIA request to EHSS and NNSA to conduct a search of responsive records, and it was determined that “no responsive records exist in EHSS and NNSA.” Determination Letter from Alexander Morris to Karla Todd at 34 (September 27, 2022). The DOE OPI also notified the Appellant she was categorized as a “commercial” requester and that “DOE’s processing costs did not exceed \$100.00. Thus, no fees will be charged for processing your request.” Determination Letter at 34. As stated above, the Appellant filed a timely appeal on December 27, 2022.

In her appeal, the Appellant claims the DOE’s search was inadequate because it was “not calculated to discover documents more responsive to [her] FIOA [sic] [r]equest” and should have included “additional offices and entities relevant to my FOIA [r]equest,” such as its national laboratories. Appeal Letter Email from Karla Todd to OHA Filings at 1, 3, 6-7. (December 27, 2022). The Appellant also claimed the DOE should have categorized her as an “other” requester because her FOIA request sought records about herself, and her request was not for “financial gain or commercial benefit.” Appeal Letter Email at 1-2.

Upon receipt of the appeal, a representative of OHA contacted a FOIA Officer at the OPI to obtain information concerning how the DOE conducted its search for responsive records. Email from Diane Miles to Alexander Morris (December 28, 2022). OHA learned that upon receiving the Appellant’s revised FOIA request, the FOIA office determined that any responsive records would most likely be found within EHSS, which implements the DOE’s medical surveillance and health screening programs for its employees, and the NNSA, which conducts research for other federal departments, including the Department of Defense. Telephone Conversation between Alexander Morris, FOIA Officer, and Diane Miles, OHA (January 10, 2023).

Correspondence obtained by OHA indicates the EHSS determined they did not have any community records or facilities in Vermont, New Hampshire, or any of the other states and previous locations listed in the Appellant’s request. Email from Alexander Morris to Diane Miles at 3 (January 9, 2023). The EHSS also indicated there is a DOE facility in Los Angeles, California, but records at that facility are held by the DOE’s Office of Environmental Management (EM) and would not cover the time-period requested by the Appellant. *Id.*

Lastly, the EHSS notified the FOIA office that the NNSA would hold records involving radiation exposure, but the records consisted of historical data, dated before the 1990’s, which was outside of the time-period requested by the Appellant. *Id.* Based on this information, the EHSS concluded it would not have records responsive to the Appellant’s FOIA request. *Id.*

Based on the information obtained from the EHSS, the DOE FOIA office asked the NNSA to search its Nevada Field Office for responsive records. Email from Alexander Morris to Diane Miles at 1-2 (January 9, 2023). Correspondence obtained by OHA indicates the NNSA conducted a search of its records of human radiation experiments, using the Appellant’s names, date of birth, and social security number. *Id.* The NNSA did not find responsive records. Email at 1.

II. Analysis

A. Adequacy of the Search

The FOIA requires agencies to make publicly available records that are reasonably described in a written request, long as those records are not exempt from disclosure. 5. U.S.C. § 552(a)(3)(A). When responding to a FOIA request, an agency's search must be "reasonably calculated to uncover all relevant documents. *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990), quoting *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). The failure of an agency to locate responsive documents does not render its search inadequate; "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. *Duenas Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). However, we will remand a case where it is evidence that the search conducted was inadequate, after reviewing the facts of the case. See, e.g., *In the Matter of Ayyakkannu Manivannan*, OHA Case No. FIA-17-0035 (2017).

In this appeal, the Appellant acknowledges that her FOIA request, in its revised state, "was detailed as well as overly broad in that it was applicable to the entirety of the DOE and its affiliated entities." Appeal Email Letter at 3. The Appellant's revised FOIA request was 18 pages long and sought "all records" from the DOE, located anywhere within at least four states, and spanning twenty years. FOIA Request from Karla Todd at 1-18.

The DOE sought, and relied upon, the personal knowledge and expertise of agency officials to determine where responsive records would likely be found and limited its scope to the EHSS and the NNSA. See *James Maison Project v. DOJ*, 267 F. Supp.3d 154, 161 (D.D.C. 2017). The DOE was not required to refer the Appellant's request to additional offices, with no reasonable belief that a search would uncover responsive records, as the Appellant seeks in her appeal. See *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (holding that in responding to a FOIA request, an agency is not required to conduct an exhaustive search of "every record system"). Particularly, when a request does not specify the locations in which an agency should search, the agency has discretion to confine its inquiry to filing systems in which they believe responsive records are likely to be found. *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998) (quoting *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994)). The Appellant did not identify specific DOE offices to be searched, indicate whether she was an employee of the DOE or a DOE contractor, or show any connection to the DOE. Revised FOIA Request from Karla Todd at 1-18. Without this additional information, we cannot conclude the DOE's search was not reasonably calculated to uncover responsive documents.

Furthermore, the Appellant's claim that a "more responsive search" would have included additional DOE offices, such as the Office of Science and the DOE's national laboratories, is akin to "mere speculation" that responsive records exist in those locations, and is not sufficient to support a finding that the DOE's search was not reasonable. *SafeCard Services, Inc. v. SEC*, 926 F.2d 1997, 1201 (D.C. Cir. 1991).

Lastly, information obtained by OHA supports that the NNSA's search was reasonably designed to locate responsive documents. The NNSA's search utilized multiple variations of the Appellant's name, her date of birth, and her social security number to determine if any responsive documents existed in their records of human radiation experiments. Email from Alexander Morris to Diane Miles at (January 9, 2023).

Accordingly, I conclude the DOE's search was reasonably calculated to locate records responsive to the Appellant's FOIA request and was therefore adequate.

B. Fee Categorization

Under the FOIA, federal agencies may charge requesters fees for the search, review, and duplications costs associated with the processing of their requests. 5 U.S.C. § 552(a)(4)(A)(i)-(ii). The FOIA provides for three categories of requesters: (1) commercial use requesters; (2) educational institutions, non-commercial scientific institutions, and representatives of the news media; and (3) all other requesters, who do not fall within either of the preceding two categories. 5 U.S.C. § 552(a)(4)(A)(ii); 10 C.F.R. § 1004.9(b)(4).

Under the DOE regulations, a "commercial use request" is "a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made." 10 C.F.R. § 1004.2(c). One who seeks records for "commercial use" will be assessed fees "to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought," even if no records are disclosed, and "are not entitled to two hours of free search time nor 100 free pages of reproduction of documents." 10 C.F.R. § 1004.9(b)(1). All "other" requesters are assessed fees for search and duplication costs only, and "the first 100 pages of reproduction and the first two hours of search time will be furnished without charge." 10 C.F.R. § 1004.9(b)(4).

After contacting the DOE FOIA office to determine how the Appellant's FOIA request was categorized, OHA learned that the Appellant was actually categorized as an "other" requester, and the "commercial" designation stated in the determination letter was a drafting error. Memorandum of Telephone Conversation between Alexander Morris, FOIA Analyst, and Diane Miles, OHA (December 28, 2022). Further, the records associated with the Appellant's FOIA request indicate the DOE categorized her as an "other" requester before it initiated its search. FOIA Request from Karla Todd at 1. Although the FOIA office did err by indicating that the Appellant was a "commercial" requester in the determination letter, this was a harmless error because she was not charged any fees associated with processing her request. Determination Letter at 34.

III. Order

It is hereby ordered that the appeal filed by Karla Todd on December 27, 2022, Case No. FIA-23-0006, 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
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