

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

In the Matter of: Siri Glimstad )  
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Filing Date: June 13, 2023 ) Case No.: FIA-23-0021  
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Issued: July 10, 2023

**Decision and Order**

On June 13, 2023, Siri Glimstad (Appellant) appealed a Determination Letter issued to it from the Department of Energy’s (DOE) Savannah River Operations Office (SRO) regarding Request No. SRO-2023-00712-F. In that determination, SRO responded to a request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. SRO stated that the requested document, a contract modification to a DOE Management and Operating contract, had not been issued. Appellant challenged the adequacy of the Determination. In this Decision, we grant the appeal.

**I. BACKGROUND**

On March 9, 2023, Appellant filed a FOIA request seeking “Modification 1008 to Savannah River Nuclear Solutions, LLC Contract DE-AC09-08SR22470.” FOIA Request at 1. The request was forwarded to SRO, which initiated a search in its Contracts department. SRO Response to Appeal (SRO Response) at 1. The requested document was located and the SRO was informed on March 22, 2023, that Modification 1008 had not been issued. *Id.* at 1. On March 22, 2023, SRO issued the Determination Letter to Appellant, which stated, “We have conducted a thorough search and found Modification 1008 has not been issued.” Determination Letter at 1. No further reason was given for not releasing the record. *Id.*

On June 13, 2023, Appellant timely appealed the Determination Letter, arguing that the Determination Letter was inadequate under the FOIA because it did not describe the method of the search. Appeal at 2–3. Appellant further argued that SRO had failed to liberally construe the FOIA request, stating that “[e]ven if Modification 1008 has not been issued, it does not mean that the modification does not exist. The FOIA Request sought Modification 1008, regardless of whether the modification had been ‘issued.’” *Id.* at 3.

**II. ANALYSIS**

The FOIA must be construed liberally in favor of disclosure and responsive records may not be withheld unless they fall within one of the exemptions enumerated in the FOIA. *Burka v. U.S. Dep’t of Health and Hum. Servs.*, 87 F.3d 508, 515 (D.C. Cir. 1996). When an agency denies a FOIA

request, it is the agency's burden to justify its decision, showing that (1) the responsive records are not agency records; (2) responsive agency records were not withheld; or (3) responsive agency records were properly withheld. *Judicial Watch, Inc. v. Fed. Hous. Fin. Agency*, 744 F. Supp. 2d 228, 232 (D.D.C. 2010) (citing *Kissinger v. Reporters Comm. For Freedom of the Press*, 445 U.S. 136 (1980)).

SRO located Modification 1008 but did not cite the application of any exemption in its Determination Letter, nor did it provide an analysis to explain why the record was not transmitted to the Individual. This omission renders inadequate SRO's decision and the Determination Letter communicating it to Appellant. 10 CFR 1004.7(c)(1) (stating that a reason for denial must be provided in the Determination Letter). Accordingly, SRO must reissue the Determination Letter and include an explanation of the reason for not transmitting the record and a citation to which, if any, exemption they use.

### III. CONCLUSION AND ORDER

It is hereby ordered that the Appeal filed on June 13, 2023, by Siri Glimstad, on behalf of its client, No. FIA-23-0021, is granted. The case is remanded to the Savannah River Operations Office for processing consistent with this decision.

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 one's 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: <https://www.archives.gov/ogis> Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770 Fax: 202-741-5769 Toll-free: 1-877-684-6448

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