

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

In the Matter of Susan Maret )

Filing Date: July 13, 2023 )

Case No.: FIA-23-0023

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Issued: July 25, 2023

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**Decision and Order**  
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On July 13, 2023, Susan Maret (Appellant) of MuckRock News appealed a final determination letter (Final Determination Letter) issued by the Department of Energy’s (DOE) Office of Public Information (OPI), dated May 16, 2023. The Final Determination Letter responded to Request No. HQ-2023-00676-F, a request filed by the Appellant under the Freedom of Information Act (FOIA), 5 U.S.C. § 522, as implemented by DOE in 10 C.F.R. Part 1004. The Final Determination Letter informed the Appellant that no responsive documents were found. The Appellant challenges the adequacy of the search. In this Decision, we deny the appeal.

**I. Background**

On March 6, 2023, the Appellant submitted a FOIA request to DOE, seeking the following information:

The updated and classified 2021 U.S. Department of Energy report provided to the White House and select American lawmakers that concluded with “low confidence” that the COVID-19 virus most likely emerged from a laboratory leak. This story was reported in the Wall Street Journal (WSJ) on February 26, 2023.

FOIA Request from Susan Maret at 2 (March 6, 2023).

The request was sent to the DOE’s Office of Intelligence and Counterintelligence (IN) to conduct a search for responsive documents. Determination Letter from Alexander C. Morris to Susan Maret at 2 (May 16, 2023). On May 16, 2023, OPI notified the Appellant that no responsive records were located. *Id.* As stated above, the Appellant filed a timely appeal on July 13, 2023. In her appeal, the Appellant asked that a “substantive search be conducted to locate and declassify the classified 2021 U.S. Department of Energy report provided to the White House and select American lawmakers.”<sup>1</sup> Appeal Email from Susan Maret to OPI at 1 (July 13, 2023). After stating that the existence of the report had been reported by “numerous publications,” the Appellant went on to “request any administrative notes that accompany the search for this request.” *Id.*

<sup>1</sup> The Appellant submitted her appeal to the OPI analyst responsible for managing the request. The OPI analyst then appropriately forwarded the appeal to OHA.

## 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., *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, despite what was reported in various media outlets, OHA has learned that the report that the Appellant is seeking regarding the origin of COVID-19 was not, in fact, authored by DOE. See *Jimmy Tobias*, Case No. FIA-23-0018 (2023) (concerning OHA’s review of an appeal concerning a similar FOIA request).

In the matter at hand, OPI provided OHA with a search certificate that was completed following the search that was conducted in this matter. The search certificate, which was signed by the IN FOIA manager on May 1, 2023, indicates that the IN performed a manual and automated search of staff records, email accounts, archived email accounts, and archived onsite records holdings on April 7, 2023. FOIA Search Certification Form at 1–3 (May 1, 2023). Under “Dates/Keywords/Other Criteria Used in Search,” a note indicates that “[IN] did not create the updated report/brief on the topic mentioned in the request[]” and that “[s]uch report/brief does not exist.” *Id.* at 3.

OHA reached out to the IN Subject Matter Expert (SME) to ascertain whether IN applied the same search method in this matter as it had employed in the matter described in *Jimmy Tobias*, or if IN relied on the same results that were produced in the aforementioned case. Case No. FIA-23-0018 (2023). OHA received a response from the IN SME indicating that the search that was conducted in this matter was “the exact search method that was applied” in the *Jimmy Tobias* matter, as both FOIA requests were for the same report. Email from IN to OHA at 1 (July 17, 2023). Accordingly, as OHA ascertained based on the above disclosure, the SME oversaw search of a computer network where classified information is stored. *Jimmy Tobias* at 2. Information of a classified nature is only kept on the aforementioned network, and the entirety of the network was searched for all employees with a network email account, including archived emails “dating as far back as October 19, 2019, using forty different search terms.” *Id.* These search terms included “pandemic,” “COVID,” “Wuhan,” “outbreak,” and “origins of the disease.” *Id.* at 2–3. This resulted in thousands of results, and the documents were assessed for responsiveness. *Id.* at 3. IN then narrowed the search to the email accounts of eight individuals, using the same search terms. *Id.* This search also covered communications exchanged with lab employees regarding the subject matter. *Id.*

IN also conducted a search of the website where IN maintains and disseminates intelligence products for other members of the intelligence community. *Id.* As all COVID-19 related information is maintained in an electronic format, no physical files were searched. *Id.* As explained in the Final Determination Letter, DOE-IN did not locate any responsive documents after conducting the aforementioned searches. Final Determination Letter at 1.

As in the matter of *Jimmy Tobias*, our review of the search shows IN “conduct[ed] a search reasonably calculated to uncover all relevant documents.” *Truitt*, 897 F.2d at 542. Given that IN conducted a search for responsive documents in the electronic systems where documents of confidential or sensitive nature such as intelligence reports are maintained, we find that the search was reasonable and used appropriate methods.

Additionally, on appeal, the Individual asked for “any administrative notes that accompany the search for this request.” Appeal at 1. As OHA is acting as an appellate body in this matter, the Appellant must file another FOIA request if she would like to request documents that were not initially sought in the first request.

### III. Order

It is hereby ordered that the Appeal filed on July 13, 2023, by Susan Maret, Case File No. FIA-23-0023, is denied in accordance with the explanation provided above. 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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