

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

In the Matter of: Anna Noteboom )  
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Filing Date: August 22, 2023 ) Case No.: FIA-23-0026  
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Issued: September 8, 2023

**Decision and Order**

On August 22, 2023, Anna Noteboom (Appellant) appealed a Determination Letter issued to her from the National Nuclear Security Administration’s (NNSA) Office of the General Counsel (OGC) regarding Request No. FOIA 22-00274-R, 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. In its Determination Letter, OGC stated that its search discovered no responsive records. Appellant challenged the adequacy of the search. In this Decision, we grant the appeal.

**I. BACKGROUND**

On August 15, 2022, the Appellant submitted a FOIA request seeking a “moment in time capture” for the following file:

- Location: Thin client associated with Microsoft 365 USERID anna.noteboom, Domain: nnsa.doe.gov, Associated email address: anna.noteboom@nnsa.doe.gov.
- What: Request Moment in Time capture for file.
- Filename contains: SpecificTask [sic] List Plan - Noteboom - v4 -AN notes. File type: Microsoft Excel (.xlsx).
- Path: “This Computer” (for account: anna.noteboom) → “Documents” → “Admin”
- Moment in Time: 1300 EDT, 13 July 2022.”<sup>1</sup>

Determination Letter from NNSA to Anna Noteboom at 1 (dated June 7, 2023, sent June 14, 2023). OGC contacted the Department of Energy’s (DOE) Office of the Chief Information Officer (OCIO) to perform the search. Email from NNSA to OHA, Exhibit (Ex.) 5 at 2 (August 30, 2023). OCIO asked OGC if Appellant was looking for email, Excel documents, or Word documents. *Id.* OGC responded that it would ask Appellant to narrow the scope of her search. *Id.* at 1. In its response to

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<sup>1</sup> Records responsive to FOIA requests include only those records in existence at the time the search is performed. *Aguiar v. DEA*, 992 F.3d 1108, 1111 (D.C. Cir. 2021). The FOIA does not require agencies to create records in response to a FOIA request or to add explanatory material to a document; a FOIA requestor “must take the agency records as he finds them.” *Id.* at 1112.

OGC, OCIO also stated that “[i]n order to conduct an effective search, [they] need to establish what data [the Appellant] is looking for.” *Id.* OCIO specifically asked for the following information:

1. Email and NAS file search of certain DOE employees, OneDrive???
2. Date of Search is July 13, 2022
3. Search parameters attachment type \*.xlxs:
  - a. Attachment name contains: “Specific Task List Plan”
  - b. Attachment name contains: “Noteboom – v4”
  - c. Attachment name contains: “AN notes”

Email accounts to be searched:

1. anna.noteboom@nnsa.doe.gov

*Id.* at 1. OGC sent Appellant the following request:

We have been tasked to contact you regarding FOIA 22-00274-R. The site office conducting the search for records has requested that you please “*Narrow the Scope of your Request.*”

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**The Site Office states:** “*The scope of the request is voluminous and overly broad and requires you to “Narrow the Scope.”*”

*In order to request the data I will need parameters like: Date range for the search is from: sample: Date range is from XXXX to XXXX*

*Search parameters for the “to” or “from” or “cc” or “bcc” fields of the following email accounts: [no email account listed]*

Email from NNSA to OHA, Ex. 4 at 2 (August 30, 2023). Appellant responded:

I’m looking for all of the files located in the following path for user account anna.noteboom:

Path: “This Computer” (for account: anna.noteboom) → “Documents” → “Admin”

Is it all documents for specific date range? AN: Yes

[I]t doesn’t matter what the individual document creation or modification dates are. I’m looking for everything that was in the Admin folder as of 1300 EDT on 13 Jul [sic] 2022. It’ll be a copy of the Admin folder and all of its contents.

*Id.* at 1. Appellant followed up a few weeks later, stating:

Just in case, restating that the request is for the files located in the following directory: This Computer → Documents → Admin

I request copies of all of the files located in that folder. (\*.\*)

If only one file can be provided, I request a copy of the file with filename: SpecificTask List Plan - Noteboom - v4 -AN notes[.]

...

The request is not for an email attachment. It's for the files located in the "This Computer" -> "Documents" -> "Admin" folder for the virtual client associated with this userID / user account.

Email from NNSA to OHA, Ex. 7 at 1–2 (August 30, 2023).

OGC requested that OCIO perform an email search based on the parameters Appellant specified. Email from NNSA to OHA, Ex. 2 at 1 (August 30, 2023). OCIO used the search terms "Directory: This Computer-> Documents-> Admin," "All files in this folder(\*.\*) Including any file in this folder with the filename: SpecificTask List Plan - Noteboom - v4 -AN notes," "UserID: anna.noteboom," "Domain: nnsa.doe.gov," and "From Date: 13 July 2022." Determination Letter at 1. On June 14, 2023, OGC sent Appellant a Determination Letter informing her that no records responsive to her request had been located in the search. *Id.* at 1. Appellant timely appealed, stating that the search had been limited to email when she had asked for a search of the Documents folder of the Microsoft Windows profile associated with USERID anna.noteboom. Appeal at 1. Appellant added that the requested file contents were subject to retention under policies of the National Archives and Records Administration. *Id.*

## II. ANALYSIS

Under the FOIA, agencies are required to "conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Reporters Comm. for Freedom of the Press v. FBI*, 877 F.3d 399, 402 (D.C. Cir. 2017). An agency is obligated to search all locations likely to hold responsive records unless doing so would cause an undue burden for the agency. *Heffernan v. Azar*, 317 F. Supp. 3d 94, 113 (D.D.C. 2018) ("[M]erely searching the location most likely [to contain responsive records] is not the relevant metric." (internal quotation omitted)); *see also Valencia-Lucena v. United States Coast Guard, FOIA/PA Records Mgmt.*, 180 F.3d 321, 327 (D.C. Cir. 1999). The government "is no doubt correct that 'the [agency] is in the best position to determine custodians most likely to have relevant records' . . . [b]ut that truism—and the deference that accompanies it—does not insulate a search that overlooks locations where responsive materials are reasonably likely to be found." *Judicial Watch, Inc. v. United States DOJ*, 373 F. Supp. 3d 120, 127 (D.D.C. 2019) (brackets in original; internal citations omitted).

FOIA requests must reasonably describe the records sought, and the agency has a duty to construe requests liberally in favor of disclosure. *Wallick v. Agric. Mktg. Serv.*, 281 F. Supp. 3d 56, 67 (D.D.C. 2017). A request is reasonably described when the phrasing is "specific enough so that a professional employee of the agency who was familiar with the subject area of the request would be able to locate the record with a reasonable amount of effort." *Id.* It is well established that the "linchpin inquiry is whether the agency is able to determine 'precisely what records (are) being requested.'" *Yeager v. Drug Enf't Admin.*, 678 F.2d 315, 326 (D.C. Cir. 1982) (quoting S.Rep. No.

854, 93d Cong., 2d Sess. 10 (1974); Source Book at 162) (parentheses in original). DOE regulations require DOE to: (1) inform a requester when the language of the request does not reasonably describe the records sought and (2) work with the requester to clarify the language of the request. 10 C.F.R. §§ 1004.4(c)(2), 1004.5(a).

NNSA should have been able to determine “precisely what records [were] being requested” and should reasonably have known the location most likely to contain the responsive records, because Appellant described them in detail, even including the file name of the record she most wanted. In this case, NNSA did not search the location where responsive documents were reasonably likely to be found. Appellant specified the location of the files she was requesting which, when combined with the date given, indicated a particular set of files contained in a particular data backup. Appellant explicitly stated that she was not seeking an email attachment, but rather a set of files or one specific file if no others could be located. She also explicitly stated that she was requesting copies of all documents located in a particular folder. Her language was clear in describing the records she was requesting and their likely location. However, after receiving Appellant’s clarifications, NNSA searched the email account associated with the User ID Appellant specified and used as search terms the location path Appellant had given for the location of the requested records. There is no evidence that a search of data backups was performed. I find that the search performed by NNSA was inadequate, as the NNSA not only failed to use methods which could be reasonably expected to produce the information requested, but it failed to search the location most likely to hold the records.

### **III. ORDER**

For the foregoing reasons, I find that the search performed in response to Appellant’s FOIA request was inadequate. It is hereby ordered that the Appeal filed on August 22, 2023, by Anna Noteboom, No. FIA-23-0026, is granted. This case is remanded to the NNSA Office of the General Counsel 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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