

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

In the Matter of Peter Rickards)
)
Filing Date: August 25, 2023) Case No.: FIA-23-0027
)
_____)

Issued: September 11, 2023

Decision and Order

On August 25, 2023, Peter Rickards (Appellant) appealed a letter dated August 23, 2023, issued by the Department of Energy’s (DOE) Idaho Operations Office (ID). The letter responded to Request No. ID-2023-01499-F, a request filed by the Appellant under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. The Appellant challenges the adequacy of the search conducted by ID. In this Decision, we grant the appeal.

I. Background

On July 7, 2023, the Appellant submitted the FOIA request to DOE. FOIA Request from Peter Rickards at 1 (July 7, 2023). The request stated:

Hi Idaho National Lab, I read in Newsweek a pregnant woman, Madison Tilly, was allowed to pose with her belly on a spent fuel dry cask while touring INL. The picture shows a dosimetry badge and I would like to know: 1) what dose the badge detect, please?. 2) How long was the photoshoot? 2a) How many minutes posing at the cask surface? 2b) How long standing within 1 meter etc, since the dose varies by distance? 3) Was that badge checked for true calibration? 4) Did she exceed the 10 mrem annual limit of citizen exposure? 5) Was the cask fully loaded, as Newsweek implied it was? Or did you make this safe posing by an empty cask? The reason I ask is because according to this peer-reviewed published science article, if you allowed Madison to pose at the cask surface for 3 minutes, she & her fetus would have received over that 10 mrem limit for citizens. See Table 7 on webpage 6/101 at: <https://www.sciencedirect.com/science/article/pii/S1738573315301236>

It appears you should have your operating permit pulled. Medical protocol is ZERO extra radiation for pregnant women, unless a Life Or Death xray decision is needed because of the leukemia risk to the fetus. A chest xray is about 8 mrem. Your stunt was not only stupid and misleading, It violated the law and endangered this innocent fetus, who is not paid to promote nuclear power. If needed, consider this a FOIA. I qualify for free, with a fee waiver since I 1) will not profit from this & 2)

will dispense the information to the public. Peter Rickards Twin Falls
peterforidaho.com

Id.

ID responded to the request. Letter from ID to Peter Rickards (August 23, 2023). ID sent a letter to the Appellant explaining that his request contained a series of questions and that FOIA does not require an agency to answer questions so there were no records responsive to his request. *Id.*

The Appellant timely appealed the determination letter on August 25, 2023. Appeal Letter Email from Peter Rickards to OHA at 1 (August 24, 2023). In its appeal, the Appellant challenges the adequacy of ID's search. *Id.*

II. Analysis

As a preliminary matter, we note that the FOIA does not require agencies to “answer questions disguised as a FOIA request.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). An agency is neither required to create new documents or do research in response to a FOIA request. *Kissinger v. Repts. Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980); *Landmark Legal Found. v. EPA*, 272 F.Supp.2d 59, 64 (D.D.C. 2003). However, an agency should make a good faith effort to assist requestors in reformulating requests for records which are “inartfully presented in the form of questions.” *Ferri v. Bell*, 645 F. 2d 1213, 1220 (3d Cir. 1981).

A FOIA request requires an agency to “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. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate, and whether the search conducted was reasonable, depends on the facts of each case. *See, e.g., In the Matter of 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)).

Although the Appellant's requests were phrased as questions, several of those questions could be reasonably read as requests for records and reformulated in a clearer manner. DOE has an obligation to make a good faith effort to interpret the Appellant's request, *see* 10 C.F.R. § 1004.4(c)(2) (explaining that if a request does not reasonably describe the records sought, the DOE response is required to describe the ways in which a response is lacking and “invite the requester to confer with knowledgeable DOE personnel” to attempt to restate, reformulate, or reduce the size of the request), and it clearly failed to do so here. ID argues that, even if the requests had been formulated properly, any responsive information would be exempt from release under FOIA Exemption 6, which protects personal privacy interests. Although any information found may be exempt, ID is still required to complete an actual search before making that determination. ID did not make an attempt to help the Appellant reformulate his questions into FOIA requests,

and it did not conduct a search. As such, we remand in order to allow ID to confer with the Appellant and conduct an appropriate search.

III. Order

It is hereby ordered that the appeal filed on August 25, 2023, by Peter Rickards, FIA-23-0027, is granted.

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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