

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

In the Matter of David Rosenthal )  
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Filing Date: October 30, 2023 ) Case No.: FIA-24-0003  
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Issued: November 27, 2023

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**Decision and Order**

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On October 30, 2023, David Rosenthal (Appellant) appealed a letter dated August 2, 2023, issued by the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA). The letter responded to Request No. FOIA 23-00049-R, filed by the Appellant under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. The Appellant challenges the adequacy of the search conducted by NNSA. In this Decision, we deny the appeal.

**I. Background**

On December 5, 2022, the Appellant submitted the FOIA request to NNSA. FOIA Request from David Rosenthal at 1 (Dec. 5, 2022). The request stated:

I request the following reports submitted by Savannah River Nuclear Solutions (SRNS), or any of its subcontractors, that refer or relate to the Savannah River Plutonium Processing Facility (SPRFF) from January 1, 2020, to present: Total Compensation System performance self assessment report; Cost Compensation (additional compensation system self-assessment data); Annual Report of Contractor Expenditures for Employee Supplemental Compensation.

*Id.*

NNSA received the request on December 5, 2022.<sup>1</sup> Final Determination Letter from NNSA to David Rosenthal at 1 (Aug. 2, 2023). The NNSA FOIA Office contacted the NNSA Savannah River Field Office (NA-SV), requesting that it conduct a search for documents relevant to the Appellant’s request. *Id.* NA-SV determined that the Savannah River Acquisition and Project Management Office (NA-SR-APM) should conduct the search because that office is responsible for contracts related to the SPRFF. Memorandum of Telephone Conversation between OHA, NNSA FOIA Office, NNSA Savannah River Field Office (NNSA-SRFO) General Counsel (GC),

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<sup>1</sup> For the purposes of the search, NNSA sorted the Appellant’s request into three items: (1) Total Compensation System Performance Self-Assessment Report; (2) Cost Compensation (additional compensation system self-assessment data); and (3) Annual Report of Contractor Expenditures for Employee Supplemental Compensation. Memorandum from NNSA Savannah River Field Office General Counsel to NNSA FOIA Office (Mar. 3, 2023).

and NNSA GC (Nov. 21, 2023). A paralegal within NA-SR-APM conducted a search of shared network drive folders titled “Budget and Project Control” and “Contracts Management.” Email from NNSA-SRFO to OHA at 1 (Nov. 21, 2023). She also searched the Acquisition and Project Management Office (APMO) SharePoint network. *Id.* For the searches in each of these locations, she used the following search terms: “Compensation”, “Performance”, “Self-Assessment”, “Expenditures”, “Annual Report”, and “Employee Supplemental.” *Id.* The search of these two systems did not yield any results. *Id.* The paralegal determined that these were the most likely places for such documents to be located based on her extensive experience in that office. *Id.* To verify the outcome of her search, the paralegal then spoke to both the lead Contracting Officer and Project Controls Lead, who both confirmed that they had not seen the requested documents in the course of their work. *Id.*

NA-SV also asked its management and operating contractor, Savannah River Nuclear Solutions (SRNS), to search for responsive records. Memorandum of Telephone Conversation between NNSA FOIA Office and OHA at 1 (Nov. 13, 2023). SRNS stated that it did not have responsive records because it does not require its subcontractors to complete the assessments mentioned in the Appellant’s request. Final Determination Letter at 1. Specifically, regarding the request for the “Annual Report of Contractor Expenditures for Employee Supplemental Compensation,” NNSA explained that it does not possess any such documents because those documents would be considered “contractor-owned” under DOE’s prime contract with SRNS. *Id.* at 2.

The Appellant timely appealed the determination letter on October 30, 2023. Appeal Letter Email from David Rosenthal to OHA at 1 (Oct. 30, 2023). In his appeal, the Appellant challenges the adequacy of NNSA’s search. *Id.* He argues that NNSA’s contract management plan with SRNS requires SRNS to complete the reports that he requested and provide them to the government, and, therefore, an adequate search would have found some responsive documents. *Id.* NNSA states that NA-SV-APM conducted a search using search terms taken from the Appellant’s original request, which returned no results. Telephone Memorandum at 1 (Nov. 13, 2023). NNSA also contends that although the contract management plan between DOE and SRNS indicates these reports are required, NNSA has never asked for or received such documents from SRNS, and, thus, the fact that NNSA could not find any responsive documents does not mean the search was inadequate. Telephone Memorandum at 1 (Nov. 9, 2023).

## II. Analysis

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. “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). 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., Ayyakkannu Manivannan*, OHA 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)).

Here, an experienced NA-SV-APM employee determined the places where documents responsive to the request would most likely be found, namely two shared network drive folders and the APMO SharePoint Network. She then used six specific search terms that came directly from the Appellant's FOIA request to look for responsive documents. When she found no responsive documents, she verified her search by reaching out to two additional NA-SV-APM employees who she thought may be aware of responsive documents if they existed. After they confirmed that they were unaware of any such documents, she determined that NNSA did not have any responsive documents.

As we noted above, “[t]he 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*, 230 F. App'x at 1 (internal quotation marks omitted). The fact that NNSA's search did not identify any responsive documents does not inherently make the search inadequate. The search described by NNSA was reasonably calculated to uncover all relevant documents as it utilized the knowledge of an experienced employee to determine appropriate search locations and then used search terms derived directly from the Appellant's FOIA request. Based on the foregoing, we find that the search performed by NNSA was reasonably calculated to uncover all relevant documents.

### **III. Order**

It is hereby ordered that the appeal filed on October 30, 2023, by David Rosenthal, FIA-24-0003, 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. § 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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