

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

In the Matter of John Marske	)	
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Filing Date: January 31, 2024	)	Case No.: FIA-24-0013
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Issued: February 9, 2024

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**Decision and Order**

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On January 31, 2024, John Marske (Appellant) appealed a letter dated November 8, 2023, issued by the Department of Energy’s (DOE) Office of the Inspector General (OIG). The letter responded to Request No. HQ-2024-00114-F, 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 OIG. In this Decision, we deny the appeal.

**I. Background**

On October 19, 2023, the Appellant submitted the FOIA request to DOE. FOIA Request from John Marske at 1 (Oct. 19, 2023). The request stated:

I am requesting any and all information, including the contents within, of the report or investigation titled “FATAL DUI COLLISION RESULTING IN DEATH (2) W/ ENHANCED CHARGES” which includes the labels: THURSDAY 13APRIL2023 LOCATION: NNSS - AREA-6 I am also requesting a copy of all pictures and information with regards to the above material. Please see attached photo of report/investigation.

*Id.*

The DOE Office of Public Information (OPI) transmitted the request to OIG, as it was determined that because the requester was seeking information related to a report or investigation, any responsive documents would be under OIG’s jurisdiction. Email from NNSA to OPI and OIG (Nov. 2, 2023). OIG accepted jurisdiction for the request on November 6, 2023. Email from OPI to OIG (Nov. 6, 2023).

In their response to this appeal, OIG stated that to their knowledge and belief, the document in the photo provided by the Appellant, although it purports to be a DOE OIG report, was not created by DOE OIG. OIG Response at 1 (Feb. 5, 2024). They further explained that the document appeared to them to be inauthentic because it did not contain a DOE OIG case number and was “inconsistent

with how DOE OIG documents typically appear.” *Id.* Despite this assertion, OIG conducted a search for any responsive documents. *Id.* OIG’s FOIA staff determined that because the request asked for documents related to an investigative report, any responsive documents would be in OIG’s iPrism investigative database, where OIG keeps all records relating to criminal investigations. Email from OIG to OHA (Feb. 6, 2024). Subsequently, a DOE OIG Special Agent with knowledge of how the iPrism database works searched the iPrism database using the following search terms, limited to the month of April of 2023: “DUI,” “Fatal DUI,” “NNS,” and “Area 6.” *Id.* None of the results returned by these searches were responsive to the Appellant’s request. OIG Response at 1; *see also* Attachment 3 to Email from OIG to OHA (Feb. 5, 2024) (showing the search results for each of the above-mentioned terms). The OIG Special Agent also asked other special agents if they were aware of any investigations like the one that was described in the request and received negative responses. OIG Response at 1–2. The DOE OIG Assistant-Special-Agent-in-Charge (ASAC) in Nevada in April of 2023 specifically confirmed that to his knowledge, there was no investigation opened regarding the matter mentioned in the Appellant’s request. *Id.* at 2.

OIG issued a final determination on November 8, 2023, indicating that OIG did not have any records responsive to the request. Final Determination Letter at 1 (Nov. 8, 2023). The Appellant timely appealed the determination letter on January 31, 2024. Appeal Letter Email from John Marske to OHA at 1 (Jan. 31, 2024). In his appeal, the Appellant challenges the adequacy of OIG’s search. *Id.* He argues that the photo of the document’s cover letter in his possession indicates that documents related to his request exist, and, therefore, an adequate search would have found some responsive documents. *Id.* OIG contends that the search that they conducted went above and beyond what is required for an adequate search. OIG Response at 2.

## 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, OIG staff used their expertise to determine appropriate search locations and conducted a search in a relevant database using a reasonable list of terms derived from the Appellant’s request. When that search produced no results, they took further steps to ensure that there were no responsive documents by asking relevant colleagues if they had heard about any such investigation. When the colleagues responded that they had not heard about any investigation

similar to the one mentioned in the request, OIG concluded that it did not possess 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). Based on the foregoing, we find that the search performed by OIG was reasonably calculated to uncover all relevant documents in its possession.

### **III. Order**

It is hereby ordered that the appeal filed on January 31, 2023, by John Marske, FIA-24-0013, 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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