

materials from July 1, 2023, up to and including the date this request is officially processed.

Please include any and all responsive and otherwise segregable materials from July 1, 2023, up to and including the date this request is officially processed.

FOIA Request from Dustin Slaughter at 1 (Aug. 9, 2023).

On August 11, 2023, OPI sent the Appellant a letter acknowledging his request. Acknowledgement Letter from OPI to Dustin Slaughter at 1 (Aug. 11, 2023). On that same day, OPI consulted with subject matter experts (SMEs) in PA and CI. Email from OPI to PA (Aug. 11, 2023); Email from OPI to CI (Aug. 11, 2023). Based upon their knowledge and experience, the relevant SMEs in PA determined that PA would not have any responsive information. Email from PA to OPI (Aug. 11, 2023). CI determined that the best course of action would be to have the Office of the Chief Information Officer (OCIO) run a search in the appropriate email accounts. Email from CI to OPI (Aug. 11, 2023).

On January 22, 2024, OPI sent a memorandum to OCIO asking them to conduct a search of the email accounts for the Acting Assistant Secretary for Congressional & Governmental Affairs and the most recent Assistant Secretary for Congressional & Governmental Affairs for any responsive documents containing any of the following terms: “David Grusch,” “Talking points,” “Testimony,” “Unidentified Anomalous Phenomena Disclosure Act,” “UAP,” “Unidentified Anomalous Phenomena,” “Unidentified Anomalous Phenomenon.” Memorandum from OPI to OCIO (Jan. 22, 2024). This search returned thousands of documents. Memorandum of Phone Conversation between OPI and OHA (Mar. 5, 2024).

Appellant emailed OPI asking for an update on the request at issue here, as well as another request, HQ-2023-01502-F on February 15, 2024. Email from Dustin Slaughter to OPI (Feb. 15, 2024). The OPI FOIA analyst handling both of these matters responded on February 20, 2024, stating that “[b]oth cases have documents that are being redlined and we are working to get 150 pages out at a time for rolling productions.” Email from OPI to Dustin Slaughter (Feb. 20, 2024). At the time he replied to the email, the FOIA analyst had the results of the search run by OCIO, but OPI had not begun to review the results for responsive documents. Memorandum of Phone Conversation between OPI and OHA (Feb. 29, 2024). In the request not at issue in this case, OPI had begun to redline responsive documents. *Id.*

OPI began to review the results of its initial search but was not finding any responsive documents among the thousands of documents that were retrieved.¹ After consulting with the Office of the General Counsel, OPI decided a narrower search would be appropriate. Memorandum at 1 (Mar. 5, 2024). On February 25, 2024, OPI attempted to narrow its search parameters and had OCIO run searches of the same two CI email accounts for (1) “Unidentified Anomalous Phenomenon” AND “David Grusch;” (2) “Unidentified Anomalous Phenomenon” AND “Talking points;” (3) “Unidentified Anomalous Phenomenon” AND Testimony; and (4) “Unidentified Anomalous

¹ As OPI noted, the initial search included terms such as “talking points” and “testimony” as independent terms, and therefore, resulted in the production of wholly unrelated documents that also mentioned these common terms. Memorandum of Phone Conversation between OPI and OHA (Mar. 5, 2024).

Phenomenon” AND UAP. Email from Richard Hayes, OPI, to Tavis Williams, OPI (Feb. 25, 2024). These searches did not return any results. *Id.*

OPI issued a determination letter to the Appellant on February 27, 2024, explaining that OPI had completed a search, but no responsive documents had been located. Determination Letter from OPI to Dustin Slaughter at 1 (Feb. 27, 2024).

The Appellant timely appealed the determination letter to the Office of Hearings and Appeals (OHA) on February 27, 2024. Appeal Letter Email from Dustin M. Slaughter to OHA at 1 (Feb. 27, 2024). In his appeal, the Appellant challenged the adequacy of the search.² Appellant argues that the determination letter only referenced a search conducted by CI, and not PA, thus the “agency seemingly did not perform searches in all locations or offices that may contain responsive records.” *Id.* at 2. Appellant also asserts that on February 20, 2024, he received an email from an agency representative who indicated that responsive records were found for this request in addition to another request, HQ-2023-01502. *Id.* at 1–2.

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)).

As an initial matter, it appears that much of the basis for the Appellant’s appeal was caused by a drafting error in the determination letter. As OPI explained, it consulted with PA regarding the Appellant’s request, and PA stated that it would not have any responsive records, based on the good-faith belief of its relevant SMEs. Memorandum at 1 (February 29, 2024); *see also* Email from PA to OPI (Aug. 11, 2023) (forwarding an email chain that showed the PA SME stating that she did not believe PA would have any responsive documents). Although the Appellant specifically requested a search of PA’s records, “a request for an agency to search a particular record system—without more—does not invariably constitute a ‘lead’ that an agency must pursue.” *Mobley v. CIA*, 806 F.3d 568, 582 (D.C. Cir. 2015); *see also Brennan Center for Justice*, OHA Case No. FIA-24-0007 at 3 (2024) (noting that two program offices declined jurisdiction based on the determination “that searches of their records systems would be unlikely to uncover

² Appellant also questioned whether Mr. Richard Hayes, who signed the determination letter, had the “appropriate authority to authorize this final determination.” Appeal at 1. OPI FOIA Officer Alexander Morris, however, explained that Mr. Hayes, as his deputy, had authority to sign the letter. Email from OPI to OHA (Feb. 28, 2024). Regardless of this fact, we cannot find, and Appellant does not cite, any law or regulation that would give us authority to grant an administrative appeal of a FOIA request based on who the denying official was.

responsive documents”). The Appellant’s contention that the “agency seemingly did not perform searches in all locations or offices that may contain responsive records” by failing to search the records of PA is akin to “mere speculation” that responsive records exist in that location, and the Appellant’s assertion is not sufficient to support a finding that OPI’s search was not reasonable. *SafeCard Services, Inc. v. SEC*, 926 F.2d 1997, 1201 (D.C. Cir. 1991); Appeal at 2. In determining where responsive documents were most likely to be located, OPI had the right to rely on the personal knowledge and expertise of agency officials. *James Maison Project v. Dep’t of Justice*, 267 F. Supp.3d 154, 161 (D.D.C. 2017). PA conferred with relevant SMEs to determine that it would not have responsive documents, and, thus, DOE’s decision not to conduct a search of PA records does not inherently make the search inadequate.

Further, Appellant contended the search was inadequate because of an email he had received from an OPI FOIA analyst. Appeal at 1–2. Although the Appellant may have thought that documents responsive to this request had been found based on the February 20, 2024 email from OPI, after speaking with OPI, it is clear that the documents that the FOIA analyst said were being redlined at the time were related to the other request referenced by the Appellant in his email. Memorandum at 1 (Feb. 29, 2024). OPI had not yet begun to review documents related to this request for responsiveness when the FOIA analyst responded to the email on February 20, 2024. *Id.*

Accordingly, we take into consideration that “[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. OPI noted that the first search was too broad, and, accordingly, it adjusted its subsequent search. Memorandum at 1 (March 5, 2024). OPI’s second narrower search returned no results. *Id.* OPI ran two additional searches for responsive documents and notified OHA of the results. Memorandum of Conversation between OPI and OHA at 1 (Mar. 6, 2024). In the relevant email accounts in CI, OPI ran a search for the term “Unidentified Anomalous Phenomenon” and a separate search for the term “Grusch.” *Id.* Both searches returned no results. *Id.* OPI’s second search, along with these two additional searches, used terms that were reasonably calculated to uncover any records that would be responsive to the Appellant’s FOIA request. The mere fact that the searches failed to yield any responsive documents is not indicative of an inadequate search. *See Jennings*, 230 F. App’x at 1; *see also White v. DOJ EOUSA*, 2012 WL 3059571, at *1 (D.C. Cir. July 19, 2012) (concluding that agency’s “failure to locate documents responsive to [the] request appears to be a function of the limited information provided in [the] request, and [requester] has not demonstrated that [agency] had a duty to investigate and provide additional search terms”). Based on the foregoing, we find that the search performed by OPI was reasonably calculated to uncover all responsive documents in the possession of DOE.

III. Order

It is hereby ordered that the appeal filed by Dustin Slaughter on February 27, 2024, Case No. FIA-24-0015, 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. § 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.

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