

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

In the Matter of Martin Pfeiffer)
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Filing Date: June 24, 2024) Case No.: FIA-24-0032
)
_____)

Issued: July 8, 2024

Decision and Order

Martin Pfeiffer (Appellant) appeals a final determination letter issued to him from the Department of Energy (DOE), National Nuclear Security Administration (NNSA) concerning Request No. FOIA 23-00256-LB, filed 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 Determination Letter informed the Appellant that the NNSA found 64 documents responsive to the request with redactions pursuant to 5 U.S.C. 552(b)(6) (Exemption 6 of the FOIA). Determination Letter from the NNSA to Appellant at 1–3. (June 13, 2024) (Determination Letter). In this appeal, the Appellant challenges the adequacy of NNSA’s search. Appeal Email from Appellant to Office of Hearings and Appeals (OHA) at 1 (June 24, 2024) (Appeal). In this Decision, we deny the Appeal.

I. Background

On July 25, 2023, the Appellant submitted a FOIA request to the NNSA seeking the following records:

Copies of images, letters, video, documents, and other records provided to the “Oppenheimer” movie crew by [Los Alamos National Laboratory (LANL)] including the “historical film of the Trinity site” provided by the National Security Research Center (NSRC)¹ and mentioned on page 58 of [National Security Science Magazine (NSSM) article] Summer 2023 issue² (see attached). See also page 61 stating that the [National Security Research Center (NSRC)] and the [Bradbury

¹ The NSRC is a scientific library, located at LANL, that houses unclassified collections related to “the people, events, and scientific achievements that make up our nation’s nuclear history.” <https://nsrc.lanl.gov/> (last visited June 28, 2024). It is LANL’s “primary custodian for historical and weapons-related records.” Letter from Triad National Security, LLC to LANL Field Office (May 9, 2024) (Triad Letter).

² National Security Science Magazine is a publication of LANL that “highlights work in the weapons and other national security programs” at the laboratory. <https://discover.lanl.gov/publications/national-security-science/> (last visited June 28, 2024).

Science Museum]³ “passed along hundreds of unclassified images they had at the ready, but they also combed through vaults and turned up historical videos that hadn’t been viewed for decades.”

Determination Letter at 1.

On October 16, 2023, the Appellant amended his FOIA request to the following: “I would like copies of all records provided to the Oppenheimer film crew by Los Alamos, including but not limited to the NSRC and the Bradbury, whether provided directly or indirectly.” *Id.* On June 13, 2024, the NNSA notified the Appellant that the LANL Field Office (NA-LA), which provides oversight of LANL, and Triad National Security, LLC (Triad), LANL’s management and operating contractor, conducted “thorough searches” and located 64 records responsive to the FOIA request. *Id.*

On June 24, 2024, the Appellant filed an appeal with OHA, challenging the adequacy of the NNSA’s search. Appeal at 2. The Appellant asserts that the NNSA’s description of its search methods were “vague[];” noting he was “left wondering if any of the multiple people with familiarity with the records involved were contacted.” *Id.* at 3. Appellant also indicated that “Los Alamos authored and published documentary material identifying that hundreds of records and numerous films are responsive to this request” and “the paucity of records released suggest a less than reasonable and less than adequate search” was conducted. *Id.*

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). In conducting a search, an agency must search in locations where responsive records are likely to be found. *Powell v. IRS*, 280 F. Supp. 3d 155, 162–63 (D.D.C. 2017). An agency is not required to conduct an exhaustive search of each of its record systems, it need only conduct a reasonable search of systems that are likely to uncover responsive records. *Ryan v. FBI*, 113 F. Supp. 3d 356, 362 (D.D.C. 2015) (citing *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). “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)).

After reviewing the documentation provided by the NNSA, we conclude that their search for responsive records was adequate. As part of its review on appeal, OHA obtained the following correspondence from the NNSA summarizing how it conducted its search for responsive records: (1) the Triad Letter, and (2) a memorandum from the NNSA to a FOIA Specialist at LANL, dated

³ The Bradbury Science Museum “provides interactive exhibits and videos that explore the origin of [LANL’s] capabilities developed during the Manhattan Project and highlight the Laboratory’s current research and innovations.” <https://about.lanl.gov/bradbury/about/> (last visited June 28, 2024).

May 9, 2024 (NNSA Memo). The NNSA Memo indicates that the Appellant filed another FOIA request (Request No. 23-00254-M), contemporaneously with the instant request, which also sought records related to the “Oppenheimer” film. NNSA Memo at 1. Because both of the Appellant’s FOIA requests “had to do with the same overall subject matter,” Triad conducted searches for both requests simultaneously, and both search efforts “overlapped and informed each other.” *Id.*

First, Triad properly began its search by relying upon the NSSM article referenced by the Appellant, which identified LANL, and several of its employees, as being involved in providing information to the Oppenheimer production, as an obvious lead to where responsive documents may be located. *Kowalczyk v. U.S. Dep’t of Justice*, 73 F.3d 386, 389 (D.C. Cir. 1996) (holding that an agency may be required to conduct a search where an agency record “contains a lead so apparent” that it “cannot in good faith fail to pursue it”). Although the NSSM article indicates that the NSRC and the Bradbury Science Museum “passed along hundred of unclassified images,” the NNSA discovered the NSSM article contained “a number of inaccuracies.” NNSA Memo at 1. After contacting the NSRC and the Bradbury Science Museum, they found “the NSRC claimed no engagement with the Oppenheimer production” and the Bradbury Science Museum merely provided “some records.” *Id.* Therefore, the information contained in the NSSM article is not a reliable indicator of the quantity of records responsive to the Appellant’s FOIA request.

Second, Triad identified two LANL employees as custodians of responsive records. During their search, Triad determined that any communication between LANL and those working on the Oppenheimer production occurred through two LANL employees, who “served as [intermediaries;]” one of whom was identified in the NSSM article referenced by the Appellant. NNSA Memo at 2. A search was conducted of both employees’ email accounts, “as that was the sole method that records were provided to the Oppenheimer production.” *Id.* A search of the LANL employees’ email accounts identified the email addresses of individuals who were associated with the Oppenheimer production and the records that LANL sent to those individuals during the film’s production. NNSA Memo at 2, Memorandum of Telephone conversation between LANL FOIA Personnel and OHA at 1 (July 1, 2024).

Third, Triad conducted searches of various LANL offices for responsive records. Triad consulted with LANL’s Weapons Research Services, the parent organization that oversees NSRC, which notified Triad that it had no direct contact with the Oppenheimer production. Triad Letter at 4. Triad also consulted with LANL’s Communications and External Affairs – Protocols, which notified Triad that their organization was also not involved with the Oppenheimer production. *Id.* Triad also requested that the Bradbury Science Museum conduct a search for responsive records, and its artifact specialist notified Triad that their engagement with the Oppenheimer production was “limited to the artifacts on display at the Museum or within its collections.” *Id.*; NNSA Memo at 1.

Finally, in addition to the searches conducted at LANL, the NA-LA Records Manager “conducted a comprehensive search of NA-LA’s [Electronic Document Online Correspondence and Concurrence System (eDOCS)]” using various search terms derived from the Appellant’s FOIA request. NNSA Memo at 3. When compared to the Appellant’s FOIA request, we find that the search terms used by NA-LA were narrowly configured to produce records responsive to the Appellant’s FOIA request.

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 the NNSA was reasonably calculated to uncover all relevant documents in its possession, and was therefore adequate.

III. Order

It is hereby ordered that the Appeal filed by Martin Pfeiffer, on June 24, 2024, Case No. FIA-24-0032, 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.

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 the 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: ogis.archives.gov Email: ogis@nara.gov
Telephone: 202-741-5770 Fax: 202-741-5769
Toll-free: 1-877-684-6448

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