



On June 27, 2024, Oak Ridge notified Appellant that “UT-Battelle, LLC [(UT-Battelle)], the contractor that operates and manages Oak Ridge National Laboratory [(ORNL)] for DOE, [ ] conduct[ed] a search for records” and that “[n]o records were found in response to [Appellant’s] request.” *Id.*

On July 8, 2024, Appellant filed the instant Appeal with OHA, challenging the adequacy of the ORO’s search. Appeal at 1. Appellant asserts that the ORO failed to “indicate where searches for responsive records were performed” and thus “seemingly did not perform searches in all locations or offices that may contain responsive records.” *Id.* Appellant asserted that if the agency failed to “search locations that may hold responsive records, the thoroughness of [the] records search can be called into question.” *Id.* Appellant requested that the “agency conduct a new, complete, and thorough search for responsive records.” *Id.* 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). However, “[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 v. Dep’t of Justice*, 230 F. App’x 1, 1 (D.C. Cir. 2007) (internal quotation marks omitted). 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 reasonability of the agency’s search depends on the facts of each case. *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 496 (D.D.C. 2017). We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Ayyakkannu Manivannan*, OHA Case No. FIA-17-0035 (2017).

As part of our review of the Appeal, OHA obtained a memorandum from a FOIA Coordinator with UT-Battelle to the FOIA Officer for ORO, dated July 15, 2024 (UT-Battelle Memo). The UT-Battelle Memo details the search methods undertaken with respect to Appellant’s FOIA request. In summary, UT-Battelle performed a “full query of all electronic and hardcopy files from 12/1/2023 thru 6/26/2024, the date UT-Battelle processed the [request]” and “found no record of communications between Dr. Sean Kirkpatrick of [ORNL] and Department of Defense Public Affairs Officer Susan Gough.” UT-Battelle Memo at 1.

The UT-Battelle Memo indicated that “search terms, parameters, and locations were jointly identified and coordinated with ORNL’s FOIA Coordinator, Dr. Kirkpatrick, the Chief Operating Officer for National Security Sciences Directorate . . . , and the Office of General Counsel.” *Id.* UT-Battelle began its search by relying on the sole identified custodian, Dr. Kirkpatrick, who “performed a search within his ORNL email account to include all email, attachments, Microsoft TEAMS communications, and Outlook calendar invites and meetings.” *Id.* In addition to Dr. Kirkpatrick’s self-search of his email account, ORNL’s Information Technology (IT)/Cyber office (IT/Cyber) conducted a search of Dr. Kirkpatrick’s emails. *Id.* For both searches, “[s]earch

parameters and key search terms . . . included ‘Susan Gough’ in the To/From/cc/bcc fields,” as well as for the keywords “OSD/PA,” “OSD/Public Affairs,” “Gough,” and “Susan Gough.” *Id.* No responsive records were located by Dr. Kirkpatrick or IT/Cyber.

In addition to the searches into Dr. Kirkpatrick’s emails, UT-Battelle indicated that (1) the ORNL FOIA Coordinator searched ORNL’s repository for official lab correspondence, (2) Dr. Kirkpatrick conducted a search of electronic file directories for any files created for the Office of the Secretary of Defense, and (3) Dr. Kirkpatrick conducted a search of a classified network controlled by DOE’s Office of Intelligence and Counterintelligence (DOE-IN). *Id.* at 1–2. Those searches also used keywords searches for “OSD/PA,” “OSD/Public Affairs,” “Gough,” and “Susan Gough.” *Id.* No responsive records were found. *Id.* UT-Battelle confirmed that Dr. Kirkpatrick has no government-issued cell phone and conducts no official business on his personal device. *Id.* at 1.

In summary, UT-Battelle undertook searches in four locations reasonably calculated to uncover records of communications between Dr. Kirkpatrick and Susan Gough, if they existed: Dr. Kirkpatrick’s email account, an ORNL repository for official lab correspondence, electronic file directories for files created for the Office of the Secretary of Defense, and a classified network controlled by DOE-IN. *Ryan*, 113 F. Supp. 3d at 362 (“[A] search may be reasonable if it includes all systems that are likely to turn up the information requested.”) (internal quotations omitted). Furthermore, when compared to Appellant’s FOIA request, the search parameters and search terms developed by UT-Battelle and employed in those searches were reasonably configured to produce any records responsive to Appellant’s FOIA request. *Coffey*, 249 F. Supp. 3d at 498 (“A federal agency has discretion to craft a list of search terms that it believes is reasonably tailored to uncover documents responsive to the FOIA request.”) (internal quotations omitted) (alterations omitted). UT-Battelle also confirmed that records were not created or maintained on any cellular device. *Kissinger v. Reporters Comm. for Freedom of Press*, 445 U.S. 136, 152 (1980) (“[FOIA] only obligates [agencies] to provide access to those [records] which it in fact has created and retained.”).

As 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 ORO 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 Dustin M. Slaughter, on July 9, 2024, Case No. FIA-24-0036, 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](http://ogis.archives.gov) Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770 Fax: 202-741-5769  
Toll-free: 1-877-684-6448

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals