

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

In the Matter of Michael Cole )

Filing Date: July 15, 2024 )

Case No.: FIA-24-0037

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Issued: August 1, 2024

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**Decision and Order**  
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Michael Cole (Appellant) appealed a determination letter dated June 3, 2024, issued to him by the Department of Energy’s (DOE) Office of Science-Consolidated Service Center, Chicago/Lemont location (SC CSC-CH), concerning a request (Request No. CH-2024-01818F) that he 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 was accompanied by a four-page document, which included hyperlinks to responsive records. Appellant challenged the adequacy of the search and the decision to provide links to the responsive documents, rather than electronic copies of the documents themselves. In this Decision, we grant the appeal in-part.

**I. Background**

On April 19, 2024, Appellant submitted a FOIA request to DOE Headquarters (HQ) stating:

This is a request for records under the Freedom of Information Act. The requested records are all annual reports and equivalent documents (e.g. “Annual Highlights”) of Princeton Plasma Physics Laboratory [(PPPL)]. There is an exception to the above requested records: the request does not include documents for which the agency is able to provide a working link to the complete document in the searchable online archive of DOE OSTI at [osti.gov](http://osti.gov).

FOIA Request from Michael Cole at 1–2 (April 19, 2024). Appellant additionally asked that the responsive records be sent to his email address in electronic format. *Id.* at 2.

On April 29, 2024, HQ transferred Appellant’s request to SC CSC-CH, which has jurisdiction over records located at PPPL. Memorandum from DOE’s Office of Public Information (OPI) to SC CSC-CH (April 29, 2024); Determination Letter at 1 (June 3, 2024).

Upon receipt of Appellant’s request, SC CSC-CH asked Princeton University (Princeton), the contractor that manages and operates PPPL for DOE, to search its files for responsive records. Determination Letter at 1. PPPL searched its relevant record-keeping and data-preservation departments for any files that contained the terms “annual report(s),” “highlights,” “technical

reports,” and “science reports.” Email from PPPL to SC CSC-CH FOIA Officer (July 26, 2024). PPPL then used these same terms to search the hard drives, local file system, and shared Google drives within the “two departments primarily responsible for producing annual reports.” *Id.* PPPL further “searched physical storage rooms for copies of materials with the relevant titles.” *Id.* PPPL additionally interviewed the “leaders” of its record-keeping departments, “spoke with seasoned employees about personal, convenience copies,” and interviewed “two senior scientific . . . retirees from [PPPL]” regarding their recollection of the annual reports. *Id.* On May 7, 2024, PPPL informed SC CSC-CH that it located publicly available versions of the annual reports for most years between 1959–2007. Memorandum from PPPL to SC CSC-CH at 1–5 (May 7, 2024). The publicly available records were located on several websites, including those of DOE’s Office of Scientific and Technical Information (OSTI), PPPL, and the Princeton University Public Library (PUL). *Id.* at 1–5. PPPL additionally noted that it “recently located a personal copy (i.e., unofficial copies held by an individual for personal convenience or reference use) of Annual Reports and Highlights from 1974–2004 in paper format.” *Id.* at 3. On May 8, 2024, SC SCS-CH requested that PPPL scan the paper copies of the annual reports from 1974–2004 for distribution as well. Email from SC SCS-CH FOIA Officer to PPPL and Princeton Site Office (PSO) (May 8, 2024).

SC CSC-CH additionally asked PSO to conduct a search of its files for responsive records. Determination Letter at 1. PSO searched its network drive for any files that contained the term “annual highlights.” Email from PSO to SC CSC-CH FOIA Officer (July 25, 2024). On May 8, 2024, PSO informed SC CSC-CH that the search produced no responsive records. Email from PSO to SC CSC-CH FOIA Officer (May 8, 2024).

SC CSC-CH acknowledged receipt of the request on May 16, 2024, and informed Appellant that his request was transferred to their office. Acknowledgement Email Letter from SC CSC-CH to Michael Cole at 1 (May 16, 2024).

On June 3, 2024, SC CSC-CH issued a determination letter and provided links to the publicly available annual reports for every year between 1959–2007.<sup>1</sup> Determination Letter at 1–2.

Appellant timely appealed the determination letter on July 15, 2024. Appeal Letter Email from Michael Cole to OHA (July 15, 2024). In its appeal, the Appellant challenged the adequacy of the search because “[n]o explanation or justification was given” as to why the search failed to locate responsive records after Fiscal Year (FY) 2007. *Id.* at 1. Appellant asserted that PPPL “has customarily produced first quarterly and then annual reports or equivalent documents starting in 1959 at the latest and for at least 48 years,” thus “[t]he strong presumption must therefore be that an annual report or equivalent document was produced by PPPL for all years.” *Id.* Appellant additionally argued that SC CSC-CH was “unresponsive” to his FOIA request because it produced only links to the responsive documents, not the documents themselves, even though “[t]he request was for all responsive records to be provided electronically to [Appellant’s email address].” *Id.*

In response, PPPL stated that it last produced a formal annual report in 2009, and indicated that it “established that no documents were present after 2009” based on its searches and interviews with multiple employees. Email from PPPL to SC CSC-CH FOIA Officer (July 16, 2024); Email from

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<sup>1</sup> PPPL uploaded scanned copies of any annual report between 1974–2004 that was not previously publicly available to its website as of the date of the determination letter.

PPPL to SC CSC-CH FOIA Officer (July 26, 2024). PPPL represented that it “retained zero copies” of both the 2008 and 2009 annual reports but noted that PUL indicated that it was in possession of unscanned copies of the 2008 and 2009 reports. Email from PPPL to SC CSC-CH FOIA Officer (July 16, 2024); Email from PPPL to SC CSC-CH FOIA Officer (July 17, 2024). SC CSC-CH further asserted that “DOE has no jurisdiction over [PUL] to request documents in their possession,” and therefore, it could not produce copies of the 2008 and 2009 reports. Email from SC CSC-CH FOIA Officer to OHA (July 17, 2024).

## 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, Appellant argues that SC CSC-CH was required to provide electronic copies of the publicly available responsive records, rather than hyperlinks to such records. However, “the FOIA does not impose a duty on agencies to transmit publicly available information in response to FOIA requests.” *See Julie Reddick*, OHA Case No. FIA-20-0037 at 3 (2020). Accordingly, we find that SC CSC-CH was under no obligation to provide any publicly available records to Appellant, let alone provide them in any specific format. In any event, Appellant has not identified any burden or harm associated with accessing the responsive records via the provided hyperlinks. Therefore, we do not find that SC CSC-CH was “unresponsive” by providing hyperlinks to the responsive records.

Regarding the searches conducted, we find that PPPL conducted a search reasonably calculated to uncover responsive records, however, PSO did not. PPPL searched for several relevant terms within multiple departments, including those related to record-keeping, data preservation, and production of the annual reports. *See* Email from PPPL to SC CSC-CH FOIA Officer (July 26, 2024). PPPL additionally searched physical storage rooms and interviewed multiple employees, including leaders of the record-keeping departments and retired scientists. While this search was not exhaustive, it covered a reasonable range of terms and sources of records that could be expected to uncover any relevant documents. *See Miller*, 779 F.2d at 1384–85 (FOIA “does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials”).

While PSO searched a large volume of files, it only used a single search term that did not consider the possibility that files of the sort Appellant was asking for could have been created under a

different name after 2009. In the email describing its search, the PSO employee responsible for completing the search stated that he found the request to be “vague.” Email from PSO to SC CSC-CH FOIA Officer (July 25, 2024). Another PSO employee said he was unsure if the request “reasonably described the records sought with sufficient detail to enable the agency to locate with a reasonable amount of effort.” Email from PSO to SC CSC-CH FOIA Officer (July 17, 2024). If PSO found Appellant’s request to be too vague or unclear for it to conduct an adequate search, it was obligated to consult with the requester to determine the best path forward. *See* 10 C.F.R. § 1004.4(c)(2) (explaining that if a request does not reasonably describe the records sought, the DOE response is required to describe the ways in which a response is lacking and “invite the requester to confer with knowledgeable DOE personnel” to attempt to restate, reformulate, or reduce the size of the request). On remand, SC CSC-CH should consult with Appellant to clarify his request and then conduct a search reasonably calculated to uncover the types of documents Appellant is seeking.

### **III. Order**

It is hereby ordered that the appeal filed on July 15, 2024, by Michael Cole, FIA-24-0037, is granted in-part.

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.

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 your right to pursue litigation. You may contact OGIS in any of the following ways:

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