

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

In the Matter of Julia Castro)
)
Filing Date: July 22, 2024) Case No.: FIA-24-0040
)
_____)

Issued: August 8, 2024

Decision and Order

Julia Castro (Appellant) appeals a final determination letter (Determination Letter) issued to her from the Department of Energy’s (DOE) Office of Public Information (OPI) concerning Request No. HQ-2023-000871-F, 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 Appellant that DOE found no records responsive to Appellant’s request. Determination Letter from OPI to Appellant at 1 (April 26, 2024). In this Appeal, Appellant challenges the adequacy of DOE’s search. Appeal Email from Appellant to Office of Hearings and Appeals (OHA) (July 22, 2024) (Appeal). In this Decision, we deny the Appeal.

I. Background

On April 20, 2023, Appellant submitted the below FOIA request to DOE:

I am looking for information about the Huemul Project, which happened in 1951 during the Perón government in Argentina and was led by Ronald Richter (Austrian physicist), who announced that he had achieved nuclear fusion.

[]

For example[,] there are documents (of which I only have a 1984 version) such as:

March 27, 1951

US DOE ARCHIVES
326 US ATOMIC ENERGY COMMISSION
Collection: Dean Diary

326 US ATOMIC ENERGY COMMISSION March 27, 1951
Dean Diary Excerpt re: Richter Peron Announcement

I am looking for this type of material, everything related to the Huemul Project, Ronald Richter and Perón.

FOIA Request Email from Appellant to OPI (April 20, 2023) (FOIA Request).

On April 21, 2023, OPI's FOIA Officer identified two offices as likely custodians of the above records: (1) DOE's Office of Legacy Management (LM) and (2) DOE's Office of Science and Technical Information (OSTI). Email from DOE-HQ FOIA Officer to FOIA Analyst (April 21, 2023). OSTI exercises separate jurisdiction from OPI with its own FOIA Officer. *Id.* Accordingly, the request remained with OPI and was also partially transferred to OSTI to conduct its own separate search and determination. *See* Transfer Memo from OPI's FOIA Officer to OSTI's FOIA Officer at 1 (May 11, 2023).

OSTI issued its final Determination Letter on February 9, 2024, which included notice of Appellant's right to appeal OSTI's "decision, as well as the adequacy of the search, . . . within **90** calendar days . . . pursuant to 10 C.F.R. § 1004.8." Determination Letter from OSTI to Appellant at 2 (Feb. 9, 2024) (emphasis in original). OSTI indicated that its search did not yield any responsive records. *Id.* at 1. On April 26, 2024, OPI issued its separate Determination Letter, in which it notified Appellant that her FOIA Request was "assigned to DOE's [LM] to conduct a search of [its] files for responsive records" and that "LM completed its search but did not locate any records responsive to [Appellant's] request." Determination Letter at 1. On July 22, 2024, Appellant filed the instant Appeal with OHA, challenging the adequacy of OPI's search: "This is to formally request an appeal of the decision on the request HQ-2023-00871-F, which was received via email on April 26, 2024. Based on the available evidence, there is a reasonable belief that the requested documents exist, and examples can be provided if necessary." Appeal. As the Appellant only appeals the April 26, 2024, Determination Letter issued by OPI, this Decision only considers the adequacy of OPI's search and does not consider the adequacy of OSTI's search.

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 its review, OHA obtained information from OPI and LM to determine whether the agency acted reasonably in its search. The OPI FOIA Officer represented that he reviewed the FOIA request, which referenced documents from 1951, and then determined from "the age of the documents requested" that LM was a likely custodian of records given its "History Division." Email from OPI FOIA Officer to OHA (July 25, 2024). As noted above, the OPI FOIA Officer also identified another possible custodian, OSTI, "just to see if they might have anything in their

collection.” *Id.* The OPI FOIA Officer represented that these were the “only two offices” that came to mind upon review of the FOIA request. *Id.*

OHA also obtained a FOIA Search Certification Form (Search Cert. Form) sent from LM to the OPI FOIA Officer on April 11, 2024. In the Search Cert. Form, LM certified that it performed both a “manual” and “automated” search in the following repositories: “archived onsite records holdings,” “archived offsite records holdings,” and “eDocs records.” Search Cert. Form at 1–2. LM further certified that it used the following search terms: “Huemul, Peron, Argentina, Richter, Huemul Project, Peron, Ronald Richter, [and] Nuclear Fusion[.]” *Id.* at 1. Using the extensive list of search terms in the multiple repositories, LM was “unable to locate any documents/records responsive to the request.” *Id.* at 2.

Because the OPI FOIA Officer reviewed the FOIA request, noted the subject matter and age of the information requested, and reasoned that two custodians, LM and OSTI, were most likely to have responsive documents, if any existed, OPI began its search reasonably, having “include[d] all [locations] that [were] likely to turn up the information requested.” *Ryan*, 113 F. Supp. 3d at 362 (internal quotations omitted). Thereafter, OPI directed LM to conduct a search of its records. LM, in turn, searched three locations and exercised its “discretion to craft a list of search terms” directly pulled from Appellant’s FOIA request; thus, LM had “reasonably tailored” its search parameters “to uncover responsive documents to the FOIA request.” *Coffey*, 249 F. Supp. 3d at 498 (internal quotations omitted) (alterations omitted). Appellant generally alleges there exists proof that “the requested documents exist . . .” and concludes therefore that the search was inadequate.¹ Appeal. However, 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 OPI was reasonably calculated to uncover all responsive records and was therefore adequate.

III. Order

It is hereby ordered that the Appeal filed by Julia Castro on July 22, 2024, Case No. FIA-24-0040, 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.

¹ The FOIA Request refers to the “Dean Diary” Collection as a location where responsive records may exist. FOIA Request. In our review of the present Appeal, OHA learned that DOE has transferred legal custody of all files of former Atomic Energy Commissioner Gordon Dean to the National Archives and Records Administration (NARA). See Email from LM to OHA (July 31, 2024). When legal custody has transferred from an agency to NARA, “NARA provides access under FOIA to . . . records . . . that have been transferred to the legal custody of . . .” NARA. 36 C.F.R. § 1250.8(a). As such, any responsive records contained within the “Dean Diary” Collection would not be subject to production by DOE in response to a FOIA request. *Swick v. U.S. Dep’t of the Army*, 471 F. Supp. 3d 246, 255–56 (D.D.C. 2020).

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
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