

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

In the Matter of Phil Rutherford)
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Filing Date: September 3, 2024) Case No.: FIA-24-0050
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Issued: September 5, 2024

Decision and Order

Phil Rutherford (Appellant) appealed a supplemental response letter issued to him on June 4, 2024, by the Department of Energy’s (DOE) Office of the Inspector General (OIG), concerning a request (Request No. HQ-2024-01160-F) 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 supplemental response was accompanied by the release of thirty responsive records, several of which contained redactions pursuant to FOIA Exemptions 5, 6, and 7(C). In this Decision, we deny the appeal.

I. Background

On February 8, 2024, the Appellant submitted a FOIA request seeking “the complete file on the [OIG]’s complaint 23-0160-C.” FOIA Request from Phil Rutherford at 1 (February 8, 2024). The Appellant further indicated that the request included:

- All written (email/text/mail/fax) communications between OIG investigators and other referenced parties in the complaint.
- All written records of all telephone/Webex/Zoom/Teams communications between OIG investigators and other referenced parties in the complaint.
 - “Other referenced parties” includes, ETEC management and staff, North Wind Portage management and staff, DOE-EM management and staff, DOE-HQ management and staff DTSC management and staff EnergySolutions management and staff, Utah Division of Waste Management and Radiation Control management and staff.
- All analysis/reports/documentation performed by OIG investigators.
- Documentation of the added cost of disposing the subject waste to EnergySolutions instead of a California waste disposal facilities compliant with California Executive Order D-62-02 (2002).
- Timeline of investigation, including start date and end date.
- Criteria by which OIG investigators used to determine that “no further action” was needed, including, OIG’s dispute that limited data from a contaminated facility was inappropriately applied to decommissioned facilities and non-radiological facilities when specific data from those facilities was available.

- OIG’s dispute that widespread data in NRC 540/541 manifests were demonstrably, and intentionally falsified,
- OIG’s dispute that taxpayers’ dollars were wasted for political reasons.
- Copy of the email/mail by which complainant was notified that the investigation had been closed.
- Name(s) of personnel completing and signing the NRC 540/541 Uniform Low-Level Radioactive Waste Manifests.

Id. at 1–2.

On March 26, 2024, OIG issued an initial response to the Appellant. Initial Response (March 26, 2024). In the initial response, OIG produced nine responsive documents with certain information withheld pursuant to Exemptions 6 and 7(C). *Id.* at 1.

On June 4, 2024, OIG issued a supplemental response to the Appellant.¹ Supplemental Response (June 4, 2024). In the supplemental response, OIG stated that after it produced the initial response, it “conducted a search of emails of an OIG investigator who had departed the OIG[,]” and discovered twenty-five additional responsive emails. *Id.* at 1. OIG further indicated that it would release a total of thirty responsive records.² *Id.* at 1 (noting that “Documents 5 through 34 are being released to [Appellant] at this time”). OIG stated that, based on its review of the responsive records, it determined that certain information should be withheld pursuant to FOIA Exemptions 5, 6, and 7(C). *Id.* at 1–2.

The Appellant timely appealed the supplemental response on September 3, 2024. Appeal Letter (September 3, 2024). In his appeal, the Appellant stated that “[o]ver the last [twenty] months, [he] ha[s] submitted two complaints (including OIG 23-0160-C), a FOIA request (HQ-2024-01160-F), and numerous emails and letters to all levels of DOE management hierarchy, in an attempt to get answers regarding DOE’s falsification of waste shipment records from the Energy Technology Engineering Center (ETEC) to EnergySolutions’ low-level radioactive waste site in Clive, Utah in 2020-2021.” Appeal Letter at 1. The Appellant further stated that he “d[id] not anticipate that [OHA] will be forthcoming or fruitful[,]” but he is “nevertheless going through the motions” by filing the appeal. *Id.* The Appellant additionally indicated that he “plan[s] to pursue [his] complaint through federal channels other than [DOE], namely the U.S. Congressional Committee on Oversight and Accountability.” *Id.* The Appellant attached, as part of his appeal, a draft whistleblower complaint that he intends to “submit to the Oversight Committee if [he] do[es] not receive a meaningful response from [OHA].” *Id.* at 2–6.

II. Analysis

¹ Although OIG’s supplemental response is dated May 31, 2024, it was not transmitted to the Appellant until June 4, 2024. Email from OIG to OHA (September 3, 2024).

² The thirty responsive records included the twenty-five newly discovered emails as well as five previously released documents. *See* Supplemental Response at 1. Regarding the previously released documents, OIG indicated that it would remove certain redactions prior to re-releasing them. *Id.*

To be considered properly complete, an appeal of a FOIA determination must “contain a concise statement of the grounds upon which it is brought and a description of the relief sought.” 10 C.F.R. § 1004.8(b). The appeal “should also include a discussion of all relevant authorities, including, but not limited to, DOE (and predecessor agencies) rulings, regulations, interpretations and decisions on appeals, and any judicial determinations being relied upon to support the appeal.” *Id.*

It is evident that the Appellant’s appeal is completely devoid of a “concise statement of the grounds upon which it is brought” or a “description of the relief sought.” 10 C.F.R. § 1004.8(b). In the appeal, the Appellant simply indicates that he has filed a FOIA request and “two complaints”; states that he is “going through the motions” by filing the appeal; and notes his intent to file a whistleblower complaint with the U.S. Congressional Committee on Oversight and Accountability if he does not “receive a meaningful response from [OHA].” Appeal Letter at 1–2. Nowhere in the appeal does the Appellant explain *what* he is actually challenging with respect to OIG’s supplemental response. Nor does the Appellant explain *why* OIG’s determinations should be overturned. Accordingly, we conclude that the Appellant’s barebones appeal fails to “contain a concise statement of the grounds upon which it is brought and a description of the relief sought” and should be dismissed. 10 C.F.R. § 1004.8(b).

III. Order

It is hereby ordered that the appeal filed on September 3, 2024, by Phil Rutherford, FIA-24-0050, 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. § 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.

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