

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

In the Matter of Dustin Slaughter)
)
Filing Date: November 22, 2024) Case No.: FIA-25-0008
)
_____)

Issued: December 6, 2024

Decision and Order

Dustin Slaughter (Appellant) appealed a determination letter dated November 7, 2024, issued to him by the Department of Energy’s (DOE) Office of Public Information (OPI) concerning a request (Request No. HQ-2024-02832-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. In its determination letter, OPI stated that its search uncovered no responsive records. The Appellant challenged the adequacy of the search. In this Decision, we grant the appeal.

I. Background

On August 3, 2024, the Appellant submitted a FOIA request asking for:

Copies of all DOE-produced intelligence assessments on unidentified anomalous phenomena, unidentified flying objects, unidentified aerial vehicles, and unidentified submerged objects currently in the possession of the DOE’s **Office of Intelligence and Counterintelligence**. Please include copies of all responsive records dated 25 years or older (from the date this request is processed) in your agency’s possession. I would also appreciate a rolling release of any responsive records.

This request includes copies of all unclassified, declassified, and classified intelligence assessments and otherwise segregable portions thereof. Please conduct searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of this request.

FOIA Request from Dustin Slaughter at 1 (Aug. 3, 2024) (emphasis in original).

OPI requested that DOE’s Office of Intelligence and Counterintelligence (IN) conduct a search. Search Certificate from OPI to IN at 1 (Oct. 23, 2024). Between September 18, 2024, and September 23, 2024, IN had its employees conduct a self-search of their email accounts and other records. *Id.* While searching, the IN employees used the following search terms: “UAP,” “UFO,” “unidentified aerial phenomena,” “flying objects,” “unidentified aerial vehicles,” and “unidentified submerged objects.” *Id.*

After receiving the search certificate from IN, OPI issued a determination letter to the Appellant on November 7, 2024, stating that no responsive documents were located. Determination Letter from OPI to Dustin Slaughter at 1 (Nov. 7, 2024).

The Appellant timely appealed the determination letter to the Office of Hearings and Appeals (OHA) on November 22, 2024. Appeal Letter Email from Dustin Slaughter to OHA at 1 (Nov. 21, 2024). In his appeal, the Appellant challenges the adequacy of the search. *Id.* at 1–2. The Appellant argues that because OPI’s response “did not indicate in its response where a search . . . was conducted,” OPI “seemingly did not perform searches in all locations that may contain responsive records.” *Id.* Upon receipt of the appeal, OHA asked OPI for more information about where the IN employees searched. The FOIA Analyst responded that “[t]his was a self-search so IN had searched their own records/emails for responsive documents.” Email from OPI FOIA Analyst to OHA (Nov. 27, 2024).

II. Analysis

As an initial matter, we note that the Appellant points to no regulation or statute that requires OPI to describe its search in its determination letter. DOE regulations state only that “[t]he Authorizing Official or FOIA Officer will prepare a written response . . . [i]nforming the requester that responsive records cannot be located or do not exist.” 10 C.F.R. § 1004.5(b)(5). OPI has clearly met the requirements laid out in 10 C.F.R. § 1004.5(b)(5), and, therefore, we find no defect in its determination letter.

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 applicable standard of reasonableness “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). In order for the agency to meet its evidentiary burden, agency declarations must be relatively detailed, non-conclusory, and submitted in good faith. *Goland v. CIA*, 607 F.2d 339, 352 (D.C. Cir. 1978). OHA has 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)).

Here, the Appellant asked for DOE-produced intelligence assessments and specifically asked for documents “dated 25 years or older.” The search certificate that OPI provided describes a reasonable set of search terms used by IN to conduct the search. However, the search certificate does not provide any insight into which employees conducted self-searches of their emails or files. Further, the search certificate does not indicate for what time period the search was conducted. Without providing further detail, OPI has not shown that the agency has met its evidentiary burden. Even if OPI had provided more detail about how the search was conducted, we could not find that

a search of IN employee emails and personal files alone was “reasonably calculated to uncover all relevant documents” because such a search may not include particular locations where intelligence assessments might likely exist. Accordingly, we remand to OPI to conduct a new search. The new search should specifically include a search of documents in the time range that the Appellant requested and should include search locations where relevant documents are most likely to be found.

III. Order

It is hereby ordered that the appeal filed by Dustin Slaughter on November 22, 2024, Case No. FIA-25-0008, is granted and remanded to OPI to conduct a new search in accordance with this decision.

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:

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