

United States Department of Energy
Office of Hearings and Appeals

In the matter of Glen Bowers)
)
Filing Date: April 22, 2013) Case No.: FIA-13-0023
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Issued: April 29, 2013

Decision and Order

On April 22, 2013, Glen Bowers (“Appellant”) filed an Appeal from a determination issued to him on March 29, 2013, by the Environmental Management Consolidated Business Center (EMCBC) of the Department of Energy (DOE) (FOIA Request Number EMCBC-2013-00743-F). That determination was issued in response to the Appellant’s information request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require EMCBC to conduct another search for the documents the Appellant requested.

I. Background

On February 27, 2013, the Appellant submitted a FOIA request to EMCBC requesting copies of

all employment records of my father, John Wyley Bowers at the Paducah Diffusion Plant Paducah, Kentucky. . . . I am requesting his civil service number, retired Q clearance number, Personnel Clearance Master Card, all radiation exposure records, non radiation exposure records, medical records, microfiche records, microfiche dose records, locator card, personnel radiation dose report, special awards, photographs, badge numbers, unit and area of work, newsletters, welding tests/certifications, welding stamp number, advanced training (schools) in welding, fabrication procedures, safety/classes orientation, and all other information that I can receive under the Freedom of Information Act.

On March 29, 2013, EMCBC issued a determination informing the Appellant that it located no responsive documents. *See* Determination Letter from Scott D. Lucarelli, FOIA Officer, EMCBC, to Glen Bowers (Mar. 29, 2013). In the instant Appeal, the Appellant challenges the adequacy of EMCBC’s search.¹ Specifically, the Appellant contends that there should be documents that are responsive to its FOIA request, which EMCBC has not produced.

¹ The Appellant further seeks to have the FOIA officer terminated, stating that he was intentionally, criminally and

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must conduct a search “reasonably calculated to uncover all relevant documents.” *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (quoting *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). “[T]he standard of reasonableness which we apply to agency search procedures 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. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Project on Government Oversight*, Case No. TFA-0489 (2011).²

EMCBC informed OHA that it transferred the Appellant’s FOIA Request to the Portsmouth Paducah Project Office (PPPO) to search for responsive documents. *See* Email from Scott Lucarelli, FOIA Officer, EMCBC, to Shiwali Patel, Attorney-Examiner, OHA (Apr. 23, 2013). In response to our inquiries, PPPO explained that approximately seven Points of Contact (POCs) conducted a search to locate documents responsive to the Appellant’s FOIA Request. *See* Email from Rochelle Zimmerman, PPPO, to Shiwali Patel, Attorney-Examiner, OHA (Apr. 25, 2013). Moreover, PPPO also forwarded the FOIA request to the Radiological Control (RADCON) group to search its database and the training organization³ to search the Swift and Staley, Inc.⁴ (SST) training records, using the individual’s name and social security number as search terms. *Id.* Finally, the POCs searched the “[Paducah Gaseous Diffusion Plant] Dosimetry Data with IDs” Access database, which contains the radiation exposure results from 1953 through 1998. However, despite their multiple searches, the POCs did not locate any responsive documents. *Id.*

Furthermore, EMCBC informed us that the Appellant previously filed a claim under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) on November 29, 2001. However, after searching its historical and current records, PPPO did not locate any responsive records regarding the Appellant’s father’s employment at the Paducah Diffusion Plant. *See* Email from Scott Lucarelli, FOIA Officer, EMCBC, to Shiwali Patel, Attorney-Examiner, OHA (Apr. 23, 2013). Subsequently, in 2007, the Appellant filed additional FOIA requests⁵ seeking similar information from DOE’s Headquarters Office and other DOE offices, including the Oak Ridge Office (ORO). *Id.*; *see* Determination Letter from Jack R. Craig, Director, EMCBC, to Glen Bowers (Jan. 28, 2008). In its determination, ORO noted that “because subcontractors took their records with them when they left Portsmouth, no additional personnel, medical and similar file could be located were the searches were conducted.” *See*

grossly negligent in failing to locate responsive documents. However, that is not a basis for granting relief in a FOIA appeal as the Office of Hearings and Appeals (OHA) does not adjudicate these kinds of allegations.

² Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, are available on the OHA website located at <http://www.energy.gov/oha>.

³ The training organization is SST’s training group that verifies if someone has participated in training at PPPO.

⁴ SST is a DOE contractor that maintains PPPO’s legacy records and is responsible for searching Energy Employees Occupational Illness Compensation Program Act claims, FOIA requests, and Privacy Act claims.

⁵ On March 30, 2007, the Appellant submitted a FOIA request with DOE’s Headquarters Office, seeking his father’s employment records, including “his retired Q clearance number, location of job sites where he worked, name of project, top secret or non top secret, hi job title and duties, and special awards, or written documents, photographs, news letter, and any and all other information that I can received [sic] under the Freedom of Information Act.” *See* FOIA Request from Glen W. Bowers (Mar. 30, 2007).

Apr. 23, 2013, Email; *see also Glen Bowers*, OHA Case No. TFA-0222; TFA-0223 (Oct. 9, 2007). Thus, regarding the instant matter, EMCBC states that it “seems likely that any employment records for Mr. Bowers’ father are held by the subcontractors themselves and not DOE.” *Id.*

Based on the foregoing, we are satisfied that EMCBC has conducted an adequate search for documents that are responsive to the Appellant’s FOIA Request. As stated above, the standard for agency search procedures is reasonableness, which “does not require absolute exhaustion of the files.” *Miller*, 779 F.2d at 1384-85. Here, based on the description of PPPO’s search for responsive documents, and previous searches for similar documents, we conclude that the search was reasonable. Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Glen Bowers on April 22, 2013, OHA Case Number FIA-13-0023, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 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.

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Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: April 29, 2013