

After receiving the Determination Letter and the accompanying documents, Ms. Deedy filed the instant appeal in which she challenged the adequacy of the DOE's search for responsive documents. Email from Donna Deedy to OHA (received January 6, 2014) (Appeal).

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).¹

As an initial matter, we note that Ms. Deedy requests documents on appeal which she did not include in her initial FOIA request. Specifically, in her Appeal, Ms. Deedy described her September 18, 2013, FOIA Request as a request for "information about the DOE's research agenda funded outside of the Occupational Energy Research Program, along with agency correspondence detailing the goals and objectives of [the Agency's] epidemiological research." Appeal. Ms. Deedy maintains that she "did not receive all pertinent documents requested" from HS, and she asked to be provided additional records, including:

- (1) "The report and funding information for Dr. John Boice's one million radiation worker research," along with related correspondence;
- (2) DOE emails, letters, and other correspondence specifying "the overarching objectives" of the Agency's health effects research agenda;
- (3) The mission statement or similar reports regarding the DOE's epidemiological programs;
- (4) "Complete details on DOE's funding for health effects research by agencies and programs to expand upon FOIA response enclosure #11," including objectives and goals for each agency involved;
- (5) Interagency agreements, memoranda of understanding, and contracts or other agreements with all parties involved in conducting DOE epidemiological and health effects research on workers;
- (6) A report or graph explaining or depicting the organizational structure of DOE's health effects research program and its personnel, including the numbers of full-

¹ Decisions issued by the Office of Hearings and Appeals (OHA) are available on OHA's website located at www.energy.gov/oha.

time employees, and the qualifications of all program personnel currently stationed at DOE worksites;

- (7) Any DOE correspondence or agreements with the Department of Labor or its contractors regarding its health effects research agenda for occupational illnesses of DOE workers.

Id. It is clear from our review of the record in this case that Ms. Deedy seeks substantially more documents on appeal than were included in the scope of the underlying FOIA Request. It is well established that an appellant is not permitted to use the administrative appeal process to expand the scope of a FOIA request. *See, e.g., The Oregonian*, Case No. FIA-13-0065 (2013); *Tarek Farag*, Case No. TFA-0385 (2010); *Cliff Jenkins*, Case No. TFA-0122 (2005); *F.A.C.T.S.*, 26 DOE ¶ 80,132 (Case No. VFA-0227) (1996).²

In reviewing this Appeal, we contacted HS in order to ascertain the scope of its initial search for responsive documents. Regarding the first document that Ms. Deedy requested – a listing of research of nuclear worker health effects that the DOE has funded outside of the OERP, HS informed us that the OERP that Ms. Deedy referenced in her appeal and the underlying FOIA request is a program administered by the National Institute for Occupational Safety and Health (NIOSH), not DOE, and that “no DOE-generated listing of research exists.” *See* Email from Bonnie S. Richter, Ph.D., Senior Epidemiologist, HS, to Diane DeMoura, Attorney-Advisor, OHA (January 14, 2014) (January 14 HS Response Email). The FOIA does not require an agency to create documents for the purposes of satisfying a FOIA request. 5 U.S.C. 552; 10 C.F.R. § 1004.4(d)(1), (2). *See also Cause of Action*, Case No. FIA-13-0015 (2013); *Tarek Farag*, Case No. TFA-0365 (2010). Consequently, HS cannot be required to produce a document that does not exist.³

HS also provided information regarding its search for any documents responsive to the second part of Ms. Deedy’s request, “internal DOE reports on health effects research strategies since 2004, and copies of correspondence with agency management and its epidemiological research office that references its nuclear worker health effects research goals and objectives.” According to HS, an extensive search was conducted of the office’s electronic and paper files for responsive documents using the following search terms or keywords: NIOSH, HHS, worker health studies, research agenda. *See* January 14 HS Response Email. HS further informed us this search was performed by the current program manager, who is the person currently most likely to have knowledge of the subject matter of the request, as well as the program manager’s supervisor. *Id.*

Based on the description above regarding the scope of the search, we find that HS performed an exhaustive search of its own records that was reasonably calculated to reveal records responsive

² However, if Ms. Deedy wishes to request this additional information, she may file a new FOIA request seeking those documents.

³ Nonetheless, while a responsive list of research does not exist, HS was aware of one study that the DOE funded and, as a courtesy, informed Ms. Deedy of the existence of this study through a note that it included in its response to her FOIA request. *Id.*; *see also* Determination Letter, Enclosure 1.

to Ms. Deedy's FOIA request. The search was, therefore, adequate.⁴ Accordingly, we will deny Ms. Deedy's Appeal.

It Is Therefore Ordered That:

(1) The Appeal filed on January 6, 2014, by Donna Deedy, OHA Case No. FIA-14-0001, 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.

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:

Office of Government Information Services
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Fax: 202-741-5759
Toll-free: 1-877-684-6448

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Director
Office of Hearings and Appeals

Date: January 24, 2014

⁴ In response to our inquiry regarding the scope of its initial search, HS conducted an additional review of its files, which yielded an additional responsive document. See Memorandum of Telephone Conversation between Bonnie S. Richter, Ph.D., Senior Epidemiologist, HS, to Diane DeMoura, Attorney-Advisor, OHA (January 23, 2014); see also January 14 HS Response Email. This additional review of its files effectively repeated the initial search that HS undertook in response to the Ms. Deedy's FOIA request. Specifically, the same personnel searched the same files, using the same search parameters. HS has informed us that it will release that document in its entirety to Ms. Deedy. *Id.* The discovery of an additional responsive document during the subsequent search does not change our finding regarding the adequacy of the initial search.