

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Donna Deedy)
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Filing Date: February 11, 2014) Case No.: FIA-14-0012
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Issued: February 18, 2014

Decision and Order

On February 11, 2014, Donna Deedy (“Appellant”) filed an Appeal from a determination issued to her on January 30, 2014, by the Office of Health, Safety and Security (HSS) of the Department of Energy (DOE) (FOIA Request Number HQ-2014-00209-F). In its determination, HSS responded to the Appellant’s request for information filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. Specifically, the Appellant challenges the adequacy of search for responsive documents. Thus, this Appeal, if granted, would require HSS to conduct another search for the documents that the Appellant requested.

I. Background

On November 15, 2013, the Appellant submitted a FOIA Request seeking “copies of correspondence between DOE officials and Keith Stalnaker, Dr. Jay Brown, or representatives of Paragon Technical Services, Inc. regarding the the [sic] disease links in HazMap and/or disease links in the Department of Labor’s [DOL] Site Exposure Matrix [SEM] from 2005 to present.” On January 30, 2014, HSS responded to the Appellant stating that it assigned her FOIA Request to the Office of Health and Safety (HS-10) and that after conducting a search, HS-10 could not locate any responsive documents. *See* Determination Letter from Patricia R. Worthington, Director, HS-10, to Appellant (Jan. 30, 2014). In its Determination Letter, HSS explained that “DOE does not have jurisdiction over the claim filing and the disease cited in HazMap and/or the disease links in DOL SEM.” *Id.*

In her Appeal, the Appellant contends that other DOE offices should have been searched, specifically stating, “[a]n adequate and more complete search would have included all agency records, including headquarters, DOE’s policy offices, resource management and oversight offices, and other Office of Health and Safety Offices.” *See* Appeal. She further argues that “[b]oth the Paragon contract with the Department of Labor, and the Institute of Medicine review of the Site Exposure Matrix reports that the Department of Energy reviews and approves all links in the database. The records I seek document that correspondence.” *Id.*

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).*

We initially asked DOE’s Office of Information Resources (OIR) why the Appellant’s FOIA Request was only submitted to HSS. *See* Email from Shiwali Patel, Attorney-Examiner, OHA, to Alexander Morris, FOIA Officer, OIR (Feb. 11, 2014). OIR explained that it “assigned the request to the office most likely to have records. Since HSS is the major office with regard to what the requester asked for, we would rely on them to tell us if any other offices should have been contacted.” *See* Email from Alexander Morris, FOIA Officer, OIR, to Shiwali Patel, Attorney-Examiner, OHA (Feb. 11, 2014).

In response to our inquiries, HSS explained the purpose of the Haz-Map database and provided us with additional information to evaluate the reasonableness of its search. *See* Email from Isaf Al-Nabulsi, Senior Technical Advisor, Japan Program Manager, Office of Health and Safety, to Shiwali Patel, Attorney-Examiner, OHA (Feb. 11, 2014). HSS explained that Haz-Map is an “occupational health database designed for health and safety professionals and for consumers seeking information about the adverse effects of workplace exposures to chemical and biological agents.” *Id.* DOL uses the database “to adjudicate claims filed under the Energy Employees Occupational Illness Compensation Act (EEOICPA),” and thus, HSS clarified that DOE “does not have jurisdiction over the claim filing and the database cited in HazMap and or the disease links in DOL Site Exposure Matrix (SEM).” *Id.* In describing its methodology for locating responsive documents, HSS stated that they “asked all former and current staff involved in the implementation of EEOICPA to search their files for any correspondence between them and Keith Stalnaker, Dr. Brown, or representative of Paragon Technical Services, Inc. regarding the disease links in the HazMap and or the disease links in the DOL’s SEM from 2005 to present.” *Id.* In conducting their searches, the staff used the following key search terms: Dr. Jay Brown, HazMap, Paragon and Keith Stalnaker. *Id.* Moreover, HSS explained that HS-10 conducted the search of its documents because HS-10 “supports the implementation for EEOICPA” and there are no other offices within HSS that have that responsibility. *Id.*

Based on the foregoing, we are satisfied that HSS 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. Moreover, based on the aforementioned, we also agree

* 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>.

that HS-10 was the appropriate office to conduct a search for documents responsive to the Appellant's FOIA Request. Thus, we will deny this Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the Appellant on February 11, 2014, OHA Case Number FIA-14-0012, 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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Director
Office of Hearings and Appeals

Date: February 18, 2014