

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

In the Matter of Cheng Che Chen)

Filing Date: December 30, 2014)

Case No.: FIA-14-0086)

Issued: January 21, 2015

Decision and Order

On December 30, 2014, Cheng Che Chen (Appellant) filed an Appeal from a determination issued to him by the National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) (Request No. 13-0230-R). In that determination, NNSA responded to a request 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. NNSA released one video. This Appeal, if granted, would require NNSA to conduct an additional search for responsive information.

I. Background

On August 2, 2013, the Appellant filed a request with NNSA for copies of the following films:

- Operation Ivy Mike shot
- EG&G PERF (film number):16119
- EG&G PERF (film number):16118
- Operation Hardtack
- Oak Shot
- EG&G PERF (film number):52603
- EG&G PERF (film number):52609
- EG&G PERF (film number):52615
- Poplar shot
- EG&G PERF (film number):52936

Request Letter received August 2, 2013, from Appellant to FOIA Officer, NNSA. In response to the request, NNSA released one film that was responsive to his request, Oak Shot film number 52603. This film also included films 52605 and 52611, which were not requested but which could not be segregated from the located film. Determination Letter dated November 18, 2014,

from Pamela Arias-Ortega, FOIA Officer, NNSA, to Appellant. The Appellant challenges NNSA's search for responsive documents. Appeal Letter dated December 5, 2014, from Appellant to Director, Office of Hearings and Appeals (OHA), DOE.

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).^{*/}

When we contacted NNSA to determine what type of search was conducted in response to the request, we were informed that NNSA contacted the Livermore Field Office (LFO), which has oversight responsibility for the Lawrence Livermore National Laboratory (LLNL). LFO conducted a search of the archives section of LLNL, where almost all videos of this nature are retained. E-mail dated January 13, 2015, from Berta Salazar, NNSA, to Janet R. H. Fishman, Attorney-Examiner, OHA. First, a computerized search was conducted of LLNL's archives using the keywords of the shots provided by the Appellant, *i.e.*, "OAK" and "Ivy Mike," as well as the five-digit numbers. *Id.* This computerized search narrowed the search to several boxes containing films. *Id.* Then, utilizing the identification numbers provided by the Appellant, a hand search was conducted of those boxes. *Id.* If the box being searched contained films with specific shot names but not the five-digit number, the box was still searched to locate responsive films. *Id.*

The courts in *Truitt* and *Miller* require that an agency responding to a FOIA request must conduct a search reasonably calculated to uncover all relevant documents. Based on the foregoing description of the search, we find that NNSA performed a search reasonably calculated to reveal documents responsive to the Appellant's request.

III. Conclusion

After considering the Appellant's argument, we have determined that the search was adequate. Accordingly, the Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Cheng Che Chen, Case No. FIA-14-0086, 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 the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may

^{*/} OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://energy.gov/oha/foia-cases>.

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
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Date: January 21, 2015