

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

In the Matter of Jeffrey B. Walburn)	
)	
Filing Date: April 23, 2015)	Case No.: FIA-15-0020
)	
_____)	

Issued: May 1, 2015

Decision and Order

On April 23, 2015, Jeffrey B. Walburn (Mr. Walburn or Appellant) filed an appeal from a determination that the Department of Energy’s (DOE) Office of Inspector General (OIG) issued on March 18, 2015. In its determination, OIG responded to a request for documents that Mr. Walburn submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. As explained below, we have determined that the Appeal should be denied.

I. Background

The Appellant requested from the DOE:

“File # 198RR059 back to 1996 and forward through present. Any entries or discussions by and with Jeff Walburn and Agent Yvette Milan. Any and all discussions held by Aubrey Flynt with Jeff Walburn. Any and all discussions held by Senior advisors to Yvette Milan or by email or any other record addressing that subject. Any and all discussions, emails, FAX, etc. between DOE and the Department of Justice [DOJ] in particular Patricia Warren OIG’s office to John Aka (Jack) Kolar Department of Justice. Any and all discussions, FAX, emails or any other written transmissions to DOJ that include the law firm Vorys Sater Seymour and Pease.”

Letter from John R. Hartman, Acting Assistant Inspector General for Investigations, OIG, to Mr. Jeffrey B. Walburn (March 18, 2015). In its determination letter, OIG stated that it had located no responsive documents. *Id.* Furthermore, OIG stated that the records Appellant sought have been destroyed pursuant to Disposition Authority N1-434-00-1,4.a(1). *Id.*

II. Analysis

The FOIA requires that a search be reasonable, not exhaustive. “[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 v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). In cases such as these, “[t]he issue is *not* whether any further documents might conceivably exist but rather whether the government’s search for responsive documents was adequate.” *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1982) (emphasis in original). 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

We contacted OIG for information regarding the search that was performed in this case. OIG informed us that it initially thought that any responsive documents were likely destroyed. Memorandum of Telephone Conversation between Adrienne Martin, Government Information Specialist (FOIA), OIG, and Brooke DuBois, Attorney-Advisor, OHA (April 27, 2015). Unless a file is marked permanent, all files are destroyed after 10 years. *Id.* The FOIA request concerned a file opened in 1996, well outside of the 10 year period the file would have been retained. Even though OIG believed the file to be destroyed, a search was still conducted. *Id.* OIG first searched through its databases, then through hard copies of files for responsive documents. *Id.* This search was done using both the file number listed in the FOIA request and the Appellant’s name. *Id.* The search did not locate any documents responsive to the FOIA request. ² *Id.*

III. Conclusion

Based on the information available, we are satisfied that OIG has conducted a search reasonably calculated to uncover the materials sought by Mr. Walburn, and that this search was, therefore, adequate under the FOIA. Thus, we will deny the present Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on April 23, 2015, by Jeffrey B. Walburn, Case No. FIA-15-0020, 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 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.

¹ 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>.

² OIG indicated that some case files were found involving Appellant, however, OIG read the FOIA request to only pertain to the specific case file referenced in the FOIA Request, File # 198RR059. We believe this interpretation is appropriate. The Appellant may file a separate FOIA request if he seeks these additional documents.

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Director
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Date: May 1, 2015