

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

In the Matter of Wayne C. Brunsilius, Sr.)	
)	
Filing Date: February 2, 2016)	Case No.: FIA-16-0018
)	
_____)	

Issued: February 16, 2016

Decision and Order

On February 1, 2016, Wayne C. Brunsilius, Sr., (Appellant) filed an Appeal from a determination issued to him by the Office of Legacy Management (OLM) of the Department of Energy (DOE) (Request No. HQ-2016-00059-F). In that determination, OLM stated that it had no documents responsive to his 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. This Appeal, if granted, would require OLM to conduct a further search for documents.

I. Background

On August 14, 2015, the Appellant filed a request with the DOE for copies of industrial hygienist testing and reports, completed at Rocky Flats Nuclear Plant for EMC Engineering on contract DE-AC04-83AL18826 that started May 23, 1983. Request Letter dated August 14, 2015 from Appellant to Chief Information Officer (CIO), DOE. By letter dated October 16, 2015, the request was transferred to OLM. Interim Letter dated October 16, 2015, from Alexander C. Morris, FOIA Officer, Office of Information Resources, to Appellant. On January 7, 2016, OLM responded, stating that it could not locate any responsive documents. Determination Letter dated January 7, 2016, from Edwin T. Parks, Acting Freedom of Information Officer, OLM, to Appellant. By letter dated January 14, 2016, the Appellant appealed OLM’s response, claiming that OLM’s search may require additional information, in addition to challenging the finding in the October 16, 2015, Interim Letter that found he was entitled to two hours of search time. Appeal Letter received February 1, 2016, 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., Ralph Sletager*, Case No. FIA-14-0030 (2014).¹

We contacted OLM to determine the scope of the search conducted in response to this request. We were informed that the subject matter expert for the Rocky Flats site records searched the OLM Electronic Recordkeeping System (ERKS) for potentially responsive information. Attachment to E-mail dated February 10, 2016, from Tamara Wilson, Records Management, OLM, to Janet R. H. Fishman, Attorney-Examiner, OHA. The ERKS system is an electronic information system database that tracks all records and information in OLM’s custody. *Id.* OLM utilized the following search terms: DE-AC04-83AL18826; 83AL18826; Industrial Hygiene; IH; Brusilius; the Appellant’s Social Security Number and his employee number; and finally the words sewer, study, utilities restoration, and phase III. *Id.*

The search yielded no responsive documents. *Id.* OLM stated further that no records were located for the contract number, but contracts are only retained for six years and three months from the date of final payment in accordance with the National Archives and Records Administration (NARA) approved DOE records retention schedules. *Id.* In addition, no Industrial Hygiene records were located for the Appellant. *Id.* These records are retained for 50 to 75 years in accordance with NARA approved DOE records retention schedules. *Id.* Finally, project records would be retained for 25-75 years, but no sanitary sewer records were located within five to seven years of the date of the contract. *Id.*

The courts in *Truitt* and *Miller* require that an agency responding to a FOIA request conduct a search reasonably calculated to uncover all relevant documents. Based on the foregoing information, we find that no additional search is necessary. We find that OLM’s search for documents responsive to Mr. Brunsilius’ August 14, 2015, request was adequate and that no responsive documents are possessed by OLM.²

III. Conclusion

After considering the Appellant’s claim, we conclude that OLM’s search was reasonably calculated to uncover responsive documents. Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed by Wayne C. Brunsilius, Sr., Case No. FIA-16-0018, 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

¹ OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://energy.gov/oha/office-hearings-and-appeals>

² The Appellant also challenged the October 16, 2016, finding that he would be required to pay fees if the search exceeded two hours. Because we find that no additional search is required, we will not address this matter.

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: February 16, 2016