

United States Department of Energy
Office of Hearings and Appeals

In the matter of National Security Archive)
)
Filing Date: August 1, 2012)
) Case No.: FIA-12-0045
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Issued: August 27, 2012

Decision and Order

On August 1, 2012, the National Security Archive (“Appellant”) filed an Appeal from a determination issued by the Department of Energy’s (DOE) Richland Operations Office (ROO). In that determination, ROO responded to an amended request for information that the Appellant 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 ROO to perform an additional search and require other DOE offices to search for a specific report dealing with a natural uranium graphite reactor that was numbered KB-789.

I. Background

On June 8, 2012, the Appellant submitted a FOIA request to DOE Headquarters asking for “a report prepared in early 1960 by the Atomic Energy Commission’s Richland Operations Office evaluating the natural uranium-graphite reactor method for the production of plutonium for nuclear weapons” (Request). Request letter from William Burr, National Security Archive to FOIA Requester Service Center, DOE Headquarters at 1 (June 8, 2012). The DOE’s Office of Information Resources (OIR) referred the Request to ROO as the location where it was most likely that a copy of the Report might be located. Memorandum from Alexander C. Morris, FOIA Officer, OIR to Dorothy Riehle, ROO (June 11, 2012). On June 19, 2012, ROO, in response to the Request, provided the Appellant with a report entitled “The Nuclear Parameters of some Graphite – Natural Uranium Lattices Measured in the PCTR” (Graphite Report) Letter from Dorothy Riehle, Freedom of Information Act Officer, ROO to William Burr, National Security Archive (June 19, 2011).

In a June 28, 2012 E-mail, the Appellant informed ROO that the Graphite Report was not the report he sought with his Request. He asked to amend his Request to ask for a report numbered “KB-789” which was authored in early 1960 or late 1959 which evaluated the natural uranium

graphite method (Report).¹ E-mail from William Burr, National Security Archive to Dorothy Riehle, ROO (June 28, 2012). In a July 11, 2012 letter, ROO informed the Individual that it was unable to locate the Report. Letter from Dorothy Riehle, ROO, to William Burr, National Security Archive (July 11, 2012) (Notification Letter).

In his Appeal, the Appellant asserts that the Report must exist somewhere within DOE and has submitted a portion of the AEC document that refers to the Report. The Appellant asks that a broader search be made of other DOE offices.

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.” *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). “[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., Todd J. Lemire*, Case No. VFA-0760 (August 26, 2002).²

During the processing of this Appeal, OHA first contacted ROO to ascertain the scope of the ROO’s search for responsive documents. *See* E-mail from Richard Cronin, Attorney-Examiner, OHA to Dorothy Riehle, ROO (August 2, 2012). In response to this inquiry, ROO informed us that it consulted with its employees most likely to have knowledge concerning the location of the Report. ROO employees at the Records Holding Area conducted an electronic search of the DOE’s Hanford, Washington site archive databases.³ In its initial search of the electronic databases, the keywords: “natural uranium,” “reactor,” “natural,” “uranium-graphite,” “reactor route” were used to find documents originating from the early 1960’s. Upon receiving additional information from the Appellant in his amended complaint, the employees also searched the databases using the term “KB-789.” The only document that was located was the Graphite Report. E-mail from Dorothy Riehle, ROO, to Richard Cronin, Attorney-Examiner, OHA (August 2, 2012).

During our review of this Appeal, we provided a copy of the Appellant’s revised Request (specifying report no. KB-789) to the OIR. OIR then initiated a search for the Report using the additional information provided by the Appellant. OIR determined that OH was the DOE HQ office most likely to possess the Report. An OH official then conducted a manual search in the file in the AEC Secretariat where the AEC Document was stored but did not find a copy of the

¹ The Appellant apparently discovered that the report he sought was numbered “KB-789” during the pendency of his original request. Specifically, a reference to the report - “KB-789” was contained in an Atomic Energy Commission (AEC) document (AEC Document) that had been provided to him in a previous FOIA Request to DOE. *See* E-mail from Terry Fehner, Office of History (OH), to Richard Cronin, Attorney-Examiner, OHA (August 20, 2012).

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

³ The ROO manages the DOE’s facility in Hanford, Washington.

Report. This official then searched AEC document holdings by using various electronic finding aids using the Report's document number (KB-789) as a key word but did not find the Report. Lastly, the official made a search of the AEC Secretariat card catalogue but could not find any reference to the Report. *See* E-mail from Terry Fehner, Office of the Secretariat, to Richard Cronin, OHA Attorney-Examiner (August 20, 2012).

After reviewing the details of the search that was conducted by ROO and OH, we conclude that their search for the Report was adequate for the purposes of the FOIA. ROO and OH searched its relevant document databases using search terms, based on the Appellant's Request. Given the description of the Report provided by the Appellant, we find that ROO and OH used database search terms that were likely to reveal the existence of the Report. Consequently, we find that ROO and OH conducted a search reasonably calculated to find the Report and thus, the Appellant's Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by the National Security Archive on August 1, 2012, OHA Case No. FIA-12-0045, is hereby denied.
- (2) This is a final order of the Department of Energy of 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.

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:

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