

United States Department of Energy
Office of Hearings and Appeals

In the matter of Erik Lerche)
)
Filing Date: January 3, 2012)
) Case No.: FIA-12-0002
)
_____)

Issued: January 31, 2012

Decision and Order

On January 3, 2012, Erik Lerche (“Appellant”) filed an Appeal from a determination issued by the Department of Energy (“DOE”) Office of Energy Efficiency and Renewable Energy (“EERE”). In that determination, EERE responded to a 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 EERE to perform an additional search and either release any newly discovered responsive documents or issue a new determination justifying the withholding of any portions of those documents.

I. Background

On October 10, 2011, Appellant submitted a FOIA request for the addresses of the 42 houses weatherized under the Federal Weatherization Assistance Program (“WAP”) in Page County, Virginia, from July 1, 2009, through June 30, 2011. *See* Letter from Erik Lerche to Robert Adams, WAP (October 10, 2011) (FOIA Request). The request was assigned to EERE’s Office of Weatherization and Intergovernmental Programs (“OWIP”) because any document responsive to the request, if it existed, would fall under the jurisdiction of that office.

EERE conducted a search of its records but did not locate responsive documents. *See* Letter from Kathleen B. Hogan, Deputy Assistant Secretary for Energy Efficiency, EERE, to Erik Lerche (December 12, 2011) (Determination Letter). In its response, EERE informed Appellant that OWIP does not require states to provide DOE with the addresses of weatherized homes and referred him to the rule which sets forth state requirements for maintaining the privacy of the WAP applicants. *See id.*

On January 3, 2012, the Office of Hearings and Appeals (OHA) received Appellant’s Appeal in which he challenges EERE’s response and requests release of the information that he requested. *See* Letter from Erik Lerche to OHA (Appeal Letter). Appellant argues that the public interest in

disclosing the participant's addresses (i.e., public validation of the WAP program) outweighs their privacy interest in anonymity. *Id.* at 2-6.

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 (2002).¹

During the processing of this Appeal, OHA contacted EERE to ascertain the scope of its search for responsive documents. *See* E-mail from Avery Webster, Attorney-Examiner, OHA to Kathleen B. Hogan, Deputy Assistant Secretary for Energy Efficiency, EERE (January 4, 2012). In its response, EERE explained that the WAP has no data in any database or other file that references the specific homes that were weatherized. *See* E-mail from Robert Adams, Supervisor, WAP (January 5, 2012) (Adams E-mail). According to EERE, the primary data is not maintained at the federal level but resides in the offices of the 1,007 subgrantees who provide direct services to families in need. *Id.*

Based on the foregoing, we find that EERE does not have the requested documents. Accordingly, the Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Erik Lerche on January 3, 2012, OHA Case No. FIA-12-0002, 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.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: January 31, 2012

¹ All OHA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.