United States Department of Energy Office of Hearings and Appeals

Filing Date:	February 14, 2012)	Case No.:	FIA-12-0007
		_)	Case No	11A-12-0007

Issued: March 21, 2012

Decision and Order

On February 14, 2012, Jon Lipsky filed an appeal from a determination issued to him on January 24, 2011, by the Department of Energy's (DOE) Office of Legacy Management (LM), in response to a request for documents that Mr. Lipsky 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. LM identified one document responsive to Mr. Lipsky's request and released that document to him in its entirety. In his appeal, Mr. Lipsky challenges the adequacy of LM's search. This appeal, if granted, would require LM to perform an additional search for responsive records, and to either release any newly discovered documents or issue a new determination letter justifying the withholding of those documents.

I. Background

In December 2011, Mr. Lipsky filed a FOIA request with LM for "a copy of the 1989 Multispectral Scanner Survey (MSS) of the former Rocky Flats Nuclear Weapons Plant." Electronic FOIA Request Form, December 14, 2011 (Initial Request) at 1. In its January 2012 response, LM informed Mr. Lipsky that its search for documents yielded one document, which LM released to Mr. Lipsky in its entirety. Letter from John V. Montgomery, LM, to Jon Lipsky, January 24, 2012 (Determination Letter) at 1. Mr. Lipsky filed the instant appeal challenging the adequacy of LM's search for documents. See Letter from Jon Lipsky to OHA, received February 14, 2012 (Appeal). In his Appeal, Mr. Lipsky contends that LM's response was inadequate. Specifically, Mr. Lipsky maintains in his Appeal that "the provided document (1) does not refer to the complete assessments by Acting Rocky Flats Manager Edward Goldberg ..., (2) does not include August 1989 or later data, (3) does not refer to the 1981 MSS survey, (4) is not a multi-volume report, (5) does not reference cesium-137, (6) does not reference strontium-90, [and] (7) the Department of Energy provided no indication of excluded or exempted materials." Appeal at 1.

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). "[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).*

In reviewing this appeal, we contacted LM to ascertain the scope of its search for responsive documents. LM informed us that LM's FOIA processing personnel searched "the DOE-LM's Electronic Recordkeeping System (ERKS) for all information potentially responsive to the request. The DOE-LM ERKS is an electronic information system database containing records, finding aids, and information for all records in LM's custody." *See* LM Response to FOIA Appeal, OHA Case No. FIA-12-0007, received March 16, 2012. LM personnel searched the ERKS database using combinations of the keywords "multispectral," "scanner survey," "survey," and "1989." *Id.* The ERKS searches indicated that a box stored at a Federal Records Center (FRC) facility contained a document potentially responsive to the request. *Id.* LM retrieved the box from the FRC facility and located the responsive document, "A Multispectral Scanner Survey of the United States Department of Energy's Rocky Flats Plant, Golden, Colorado." *Id.* LM's search yielded no other documents responsive to Mr. Lipsky's request. *Id.* Based on this information, we find that LM performed an extensive search reasonably calculated to reveal records responsive to Mr. Lipsky's FOIA request. Accordingly, the search was adequate and the instant Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed on February 14, 2012, by Jon Lipsky, OHA Case No. FIA-12-0007, 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 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: March 21, 2012

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^{*} OHA FOIA decisions issued after November 19, 1996 may be accessed at http://www.oha.doe.gov/foia1.asp.