

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

In the Matter of National Security Archive )  
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Filing Date: June 12, 2012 ) Case No.: FIA-12-0034  
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Issued: July 9, 2012

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**Decision and Order**

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This Decision concerns an Appeal that the National Security Archive (NSA) filed in response to a determination that the Department of Energy's (DOE) Office of Information Resources (OIR) issued to it. In that determination, the OIR replied to a request for documents that NSA submitted under the Freedom of Information Act, 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that the DOE conduct another search for responsive documents.<sup>1</sup>

In its FOIA request, NSA sought access to documents relating to the Bonn Climate Change talks held in August 2010. OIR determined that any responsive documents would be located in the Office of Policy and International Affairs (OPIA), and referred the request to that Office. OPIA conducted a search, and located one document that was responsive to the request. That document was released to NSA in its entirety. In its Appeal, NSA challenges the adequacy of the search. It claims that, in addition to OPIA, the DOE's retired records at the Washington National Records Center should have been searched.

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Patsy Cornwell Sherriff*, Case No. FIA-12-0032 (2012); *Glen Bowers*, Case No. TFA-0138 (2006). The FOIA, however, 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) (*Miller*); *accord, Weisberg v. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). 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).

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<sup>1</sup> 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>.

In order to obtain further information concerning the scope of the search that was performed, we contacted OIR and OPIA. OIR has agreed to expand the scope of the search that was performed to include the Washington National Records Center. *See* Memorandum of June 21, 2012, telephone conversation between James Little, Office of Hearings and Appeals, and Vera Dunmore, OIR. OPIA informed us that NSA's request was referred to Elmer Holt, a senior economist in that Office who participated in the conference. He notified us that he searched his records thoroughly and only found the one responsive document.<sup>2</sup> *See* Memorandum of June 21, 2012, telephone conference between Mr. Little and Mr. Holt, OPIA. Therefore we will remand this matter to OIR so that the search of the retired DOE records at the Washington National Records Center can be performed. Upon completion of this search, DOE should issue a new determination to NSA setting forth the results of the new search.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by National Security Archive, OHA Case Number FIA-12-0034, is hereby granted as set forth in paragraph (2) below.

(2) This matter is hereby remanded to the Office of Information Resources for additional proceedings consistent with the directions set forth in this Decision.

(3) 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: July 9, 2012

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<sup>2</sup> During our conversations with Mr. Holt, we learned that he has notes that he took for personal use at the conference and correspondence concerning the conference. However, he did not share those notes with other employees, nor were they ever maintained in an agency system of records. *See* Memorandum of June 27, 2012 telephone conversation between Mr. Little and Mr. Holt. Consequently, Mr. Holt's personal notes are not agency records and are therefore not subject to the FOIA.

Mr. Holt further informed us that the correspondence is of a logistical nature. Since NSA's request specifically excluded logistical or administrative materials, the correspondence was also properly identified as non-responsive.