

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Judicial Watch)
)
Filing Date: June 25, 2012) Case No.: FIA-12-0036
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_____)

Issued: July 3, 2012

Decision and Order

On June 25, 2012, Judicial Watch (Appellant) filed an Appeal from a determination issued to it on May 31, 2012, by the Office of Information Resources (OIR) of the Department of Energy (DOE). In that determination, OIR did not locate any documents responsive to the request 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 OIR to conduct an additional search for responsive documents.

I. Background

On April 30, 2012, the Appellant filed a request with OIR for “[a]ll communications with Nancy-Ann DeParle, any other member of the Obama administration, or any third party regarding the development and implementation of ‘alternative administrative measures’ to advance the President’s [sic] dianpolicy goals in circumvention of the legislative branch of the federal government.” Request dated April 30, 2012, from Appellant to OIR. On May 31, 2012, OIR responded that it could not locate any responsive information. Determination Letter dated May 31, 2012, from Alexander C. Morris, FOIA Officer, OIR, to Appellant. In the instant Appeal, the Appellant challenges OIR’s search for responsive documents. Appeal Letter dated June 25, 2012, from Appellant to Secretary Steven Chu, care of Poli Marmolejos, 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.” *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The 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., Glen Bowers*, Case No. TFA-0138 (2006); *Mark D. Siciliano*, Case No. FIA-12-0019 (2012).^{1/}

We contacted OIR to determine what type of search was conducted. OIR indicated that it asked the Office of the Chief Information Officer (CIO) to conduct a search of the email accounts belonging to Steven Chu, Daniel Poneman, and Arunava Majumdar, for information regarding “alternative administrative measure.” Attachment to E-mail dated June 25, 2012, from Angelia Bowman, OIR, to Janet R. H. Fishman, OHA. The CIO found nothing responsive. *Id.* In addition, OIR conducted a search of the Electronic Document Online Correspondence and Concurrence System (eDOCS). *Id.* OIR conducted a search of the White House Congressional Correspondence folder within eDOCS, as well as all White House mail, including any correspondence from the President or his direct staff. E-mail dated June 26, 2012, from Alexander C. Morris, FOIA Officer, OIR, to Janet R. H. Fishman, OHA. Finally, OIR conducted a search for the term “Deparle.” *Id.* No responsive information was found. *Id.* After receiving a copy of the Appeal, OIR confirmed the previous findings that there were no responsive documents. *Id.* Based on additional information included in the Appeal but not in the original request,^{2/} OIR conducted a further search of the eDOCS to look for anything related to “advanced drop-in aviation or marine biofuels.” *Id.* Again, OIR found nothing responsive. *Id.*

As the foregoing indicates, OIR searched the proper database for records pertaining to the Appellant’s request. OIR searched eDOCS, which contains both incoming and outgoing documents. E-mail dated June 27, 2012, from Alexander Morris to Janet R. H. Fishman. OIR used the proper search terms, including “alternative administrative measures” and “Deparle.” It even extended its search based on information provided in the Appeal to include the terms “marine fuels” and “drop-in aviation.” *Id.* We find that OIR conducted a search reasonably calculated to uncover responsive information. Therefore, we will deny the Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed by Judicial Watch, Case No. FIA-12-0036, 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 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 3, 2012

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

^{2/} The FOIA does not allow a requester to broaden its request on Appeal. *Snake River Alliance*, Case No. TFA-0468 (2011); *Barbara Schwarz*, Case No. VFA-0641 (2001), citing *F.A.C.T.S.*, 26 DOE ¶ 80,132 (1996); *Energy Research Foundation*, 22 DOE ¶ 80,114 (1992); *Cox Newspapers*, 22 DOE ¶ 80,106 (1992); *Bernard Hanft*, 21 DOE ¶ 80,134 (1991); *John M. Seehaus*, 21 DOE ¶ 80,135 (1991). OIR undertook the new search for possibly responsive information based on the terms “marine fuels” and “drop-in aviation” on its own initiative. June 26, 2012, E-mail.