



## 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., Glen Bowers*, Case No. TFA-0138 (2006); *Mark D. Siciliano*, Case No. FIA-12-0019 (2012).<sup>11/</sup>

We contacted PI to determine what type of search was conducted. Elmer Holt of PI, one of those individuals identified by the Appellant as having attended the conference, indicated that he searched his work e-mail account, documents stored on his computer, and hard copy files/papers/notes in his possession related to the activities taking place at the UNFCCC climate meeting in Tianjin, China, during the Fall of 2010. He did not locate any responsive documents. E-mail dated July 9, 2012, from Elmer Holt, PI, to Janet Fishman, OHA, DOE. He also indicated that he did not forward any documents to the Washington National Records Center for storage. E-mail dated July 11, 2012, from Elmer Holt to Janet Fishman. We also contacted Casey Delhotal and Richard Duke to determine what responsive records they might possess. They both stated that, although they were in Tianjin at the time of the summit, they were there because they “wanted to talk to National Development Reform Commission (who hosted the Tianjin conference) about Clean Energy Ministerial initiatives (a program completely separate from the United Nations Framework Commission on Climate Change conference). [They were] not part of the official U.S. negotiating team at the conference and did not have any of the documents produced by the State-lead negotiating team.” E-mail dated July 11, 2012, from Casey Delhotal, PI, to Janet Fishman. Mr. Duke concurred with Dr. Delhotal that he was in Tianjin to meet with Chinese officials, not to attend the conference. E-mail dated July 12, 2012, from Richard Duke, Deputy Assistant Secretary, PI, to Janet Fishman.

The three people from DOE who the Appellant identified as having attended the conference searched their records for responsive information. Nothing responsive was found. Mr. Holt, who actually did attend the conference, indicated that he did not send anything to the Washington National Records Center. Dr. Delhotal and Mr. Duke indicated that they did not bring any records back with them as they were not in Tianjin to attend the conference. Based on the foregoing, we believe that the search was reasonably calculated to uncover responsive information. Accordingly, this Appeal will be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by National Security Archive, Case No. FIA-12-0037, is hereby denied.

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

(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 19, 2012