

June 7, 2004
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: National Security Archive

Date of Filing: April 21, 2004

Case Number: TFA-0058

On April 21, 2004, National Security Archive appealed a determination issued by the National Nuclear Security Administration (NNSA) of the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. In its appeal, National Security Archive contends that NNSA had failed to conduct an adequate search for documents that were responsive to a FOIA request it had filed. For the reasons detailed below, we find that NNSA conducted an adequate search for responsive documents and will deny the appeal filed by National Security Archive.

I. Background

National Security Archive filed a request in which it sought any reports, transcripts, memoranda, or summaries relating in whole or in part to 1) the RAND Corporation's Nu-Opts (nuclear options) studies during the late 1960s and early 1970s and 2) a conference held at Los Alamos Laboratory in early September 1969 on tactical nuclear weapons, which included a presentation on the RAND Corporation Nu-Opts study. *See* Determination Letter at 1. On April 1, 2004, NNSA issued a determination which stated that the Los Alamos Site Office and the Los Alamos National Laboratory searched their files and found no documents responsive to National Security Archive's request. *Id.* In its Appeal, National Security Archive challenges the adequacy of the search conducted by NNSA.

II. Analysis

We have held that a FOIA request deserves a thorough and conscientious search for responsive documents. When we have found that a search was inadequate, we have consistently remanded the case and ordered a further search for responsive documents. *E.g.*, *Todd J. Lemire*, 28 DOE ¶ 80,239 (2002); *Marlene R. Flor*, 23 DOE ¶ 80,130 (1993); *Native Americans for a Clean Environment*, 23 DOE ¶ 80,149 (1993). However, the FOIA requires that a search be reasonable, not exhaustive. "The standard of reasonableness that we apply to the agency search procedures does not require absolute exhaustion of files; instead it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985).

In reviewing the present Appeal, we contacted an official at NNSA to ascertain the extent of the search that had been performed. Upon receiving National Security Archive's Request for Information, NNSA contacted the Los Alamos Site Office, specifically the Office of Business Administration, to conduct a search for responsive documents. We were informed that the Office of Business Administration conducted a search of the Central Files guide and could not locate any responsive records. *See* Record of Telephone Conversation between Carolyn A. Becknell, NNSA and Kimberly Jenkins-Chapman, OHA (May 18, 2004). In addition to this search, the Los Alamos Site Office asked the Los Alamos National Laboratory to search its files for responsive records. The Information Practices Office within the Los Alamos National Laboratory searched numerous databases (all of the databases available that could possibly possess responsive records) using the key words "RAND Corporation," "nuclear options," and "conference." No responsive records were located as a result of this search. *Id.* NNSA stated that National Security Archive did not provide any other information in its request that would have directed NNSA to search anywhere else for responsive records. In its Appeal, National Security Archive enclosed the first two pages of a speech given by an Air Force general at the conference referred to in its request. NNSA has suggested that the Appellant contact the Air Force for possible responsive records.

Given the facts presented to us, we are convinced that NNSA conducted an adequate search which was reasonably calculated to uncover documents responsive to National Security Archive's request. Accordingly, National Security Archive's Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by National Security Archive, OHA Case No. TFA-0058, on April 21, 2004, 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.

George B. Breznay
Director
Office of Hearings and Appeals

Date: June 7, 2004