November 7, 2005

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Samuel D. Johnson

Date of Filing: June 24, 2005

Case Number: TFA-0107

On June 24, 2005, Samuel D. Johnson filed an Appeal from a determination issued to him on April 21, 2005, by the FOIA/Privacy Act Group of the Department of Energy (DOE/HQ). That determination was issued in response to a request for information that Mr. Johnson submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. Mr. Johnson asks that DOE/HQ conduct an additional search for documents responsive to his request and release information that was withheld.

I. Background

On September 24, 2002, Mr. Johnson filed a request for information in which he sought a copy of his personnel security file and all other information pertaining to him that the DOE maintains. *See* April 21, 2005 Determination Letter at 1. In a letter dated November 28, 2003, Mr. Johnson was provided a partial response that included 57 documents that were generated from his personnel security file. At that time, Mr. Johnson was told that two other documents from the Office of Counterintelligence were located in the file but had to be reviewed to determine their releasability. On April 21, 2005, DOE/HQ issued a final determination in which it stated that it was releasing one of the documents in its entirety. The determination further stated that the second document was being released with certain deletions pursuant to Exemption 7(E) of the FOIA. The document is a memorandum to Joseph S. Mahaley from Michael J. Waguespack, Office of Counterintelligence, dated October 16, 2001, and discusses a summary of polygraph-derived information.

On June 24, 2005, Mr. Johnson filed the present Appeal with the Office of Hearings and Appeals (OHA). In his Appeal, Mr. Johnson in general challenges the adequacy of the search conducted by DOE/HQ. */ *See* Johnson Appeal. He asks that the OHA direct DOE/HQ to conduct a new search for responsive documents.

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*/ Mr. Johnson submitted a voluminous Appeal addressing various arguments, many of which we are unable to respond to in the context of this FOIA determination. Among his many arguments, Mr. Johnson states that DOE/HQ took excessive time to respond to his FOIA request. *See* Johnson Appeal.

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. Department 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. Department of State*, 779 F.2d 1378, 11384-85 (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 Milner*, 17 DOE ¶ 80,102 (1988).

In reviewing the present Appeal, we contacted officials at DOE/HQ to ascertain the extent of the search that had been performed by the Office of Counterintelligence and to determine whether any other documents responsive to Mr. Johnson's request might reasonably be located. DOE/HQ has informed us that since it issued its April 21, 2005 determination to Mr. Johnson, Mr. Johnson has filed several additional requests for information. DOE/HQ has provided additional documents related to Mr. Johnson's original request. DOE/HQ has also informed us that more responsive material may be forthcoming. In light of this information, this Appeal is therefore granted in part and this matter is remanded to the Office of Counterintelligence. This will allow the requester to obtain additional information bearing upon his original request and to reconsider or reformulate his argument on adequacy of search. It should also reduce delays and inefficiencies associated with piecemeal appeals. The Office of Counterintelligence will thereby also have an opportunity to reconsider its deletions from the second document in light of arguments made by the requester on appeal. On remand, the Office of Counterintelligence shall release any additional responsive material to Mr. Johnson. To the extent release is denied, the Office of Counterintelligence shall issue a new determination letter justifying the withholding of any information that it redacts from any responsive material it provides to the requester.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Samuel D. Johnson on June 24, 2005, OHA Case No. TFA-0107, is hereby granted as set forth in paragraph (2) and denied in all other respects.

(2) This matter is remanded to the Office of Counterintelligence for processing in accordance with the guidance in the Decision above.

(3) 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: November 7, 2005