



DEPARTMENT OF THE NAVY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
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IN REPLY REFER TO:  
5720  
Ser 14/133  
March 13, 2020

Mr. John Greenewald  
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SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST DON-NAVY-2019-011490; FOIA APPEAL DON-NAVY-2020-003752

This letter responds to your FOIA appeal received in our office on January 30, 2020, given the tracking number 2020-003752. Your underlying FOIA request, DON-NAVY-2019-01149, submitted to the Director of Navy Staff (DNS-36), sought “1) All photographs / videos /reports / letters / memos / etc. that were sent by your agency, to the Office for the Secretary of Defense (OSD) / the Under Secretary of Defense for Intelligence (USDI), or to the Defense Intelligence Agency (DIA) in regards to the ‘Advanced Aerospace Threat Identification Program’ or AATIP.” The IDA responded to your request informing you that no responsive records exist, however, the IDA did refer your request to the Office of the Secretary of Defense (OSD) to conduct a new search and respond directly to you. Your appeal argues responsive records must exist because the Department of the Navy has acknowledged the Agency’s involvement in the AATIP and that “[a]lthough my request was forwarded to OSD/JS for processing, I believe that information provided by the Navy to OSD or to DIA, would have the Navy as the OCA. Therefore, I do not believe OSD would be able to have authority to declassify any records wherein the Navy was the OCA.”

Your appeal is a request for a final agency determination under the FOIA. For the reasons set forth below, I must deny your appeal.

As an initial matter, I am interpreting your appeal as arguing the IDA did not conduct an adequate search.

The adequacy of an agency’s search for information requested under the FOIA is determined by a “reasonableness” test. *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986); *Weisberg v. United States Dep’t of Justice*, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983). As a general rule, an agency must undertake a search that is reasonably calculated to locate the requested information. *Kowalczyk v. Department of Justice*, 73

F.3d 386, 388 (D.C. Cir. 1996). Courts have found agencies satisfy the “reasonableness” test when they properly determine where responsive records are likely to be found and search those locations. *Lechliter v. Rumsfeld*, 182 F. App’x 113, 115 (3rd Cir. 2006) (concluding that agency fulfilled duty to conduct a reasonable search when it searched two offices that it determined to be the only ones likely to possess responsive documents (citing *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)); *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 849 F. Supp. 2d 47, 55-56 (D.D.C. 2012) (concluding that agency’s search was reasonable because agency determined that all responsive records were located in a particular location created for express purpose of collecting records related to subject of request and searched that location).

Moreover, courts have found that an agency’s inability to locate a responsive record does not undermine an otherwise reasonable search. *Moore v. FBI*, 366 F. App’x 659, 661 (7th Cir. 2010) (noting that although agency had years earlier destroyed some potentially responsive records, that fact does not invalidate the search). Additionally, the mere speculation that requested documents exist does not undermine the finding that the agency conducted a reasonable search. *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004) (“Likewise, the agency’s failure to turn up a particular document, or mere speculation that as yet uncovered documents might exist, does not undermine the determination that the agency conducted an adequate search for the requested records.”).

Following receipt of your appeal letter, my staff contacted DNS-36 requesting information regarding the method and scope of their search. DNS-36 oversees the Navy’s FOIA program and is in regular contact with various other IDAs regarding their command’s authority and what records they maintain. DNS-36 determined that the Navy Staff Directorate of Intelligence and Communications (N2/N6), Naval Air Warfare Center (NAVAIR), the Office of Naval Intelligence (ONI), Commander Naval Air Forces, Pacific (NAVAIRPAC), and Commander Naval Air Forces, Atlantic (NAVAIRLANT) were the commands and offices most likely to maintain the records you seek. Each of these offices maintain classified and unclassified electronic systems of records searchable by key words similar to the manner in which commercial internet search browser such as google.com or yahoo.com operate. Here, the IDA instructed each of these commands and offices to search their electronic records for the terms “Advanced Aerospace Threat Identification Program,” “AATIP,” “Unidentified Flying Object,” “UFO,” “Unidentified Aerial Phenomena,” “UAP,” along with some vernacular terms such as “Alien,” “phenomena,” “unexplained,” “Extra-Terrestrial,” and “ET.” While the terms “phenomena,” and “unexplained” yielded responsive results, further review of these positive results found they had no relevance to the AATIP. The other search terms yielded no responsive results.

I find DNS-36's search to be adequate. Courts have found agencies satisfy the "reasonableness" test when they properly determine where responsive records are likely to be found and search those locations. *Lechliter v. Rumsfeld*, 182 F. App'x 113, 115 (3rd Cir. 2006) (concluding that agency fulfilled duty to conduct a reasonable search when it searched two offices that it determined to be the only ones likely to possess responsive documents (citing *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)); *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 849 F. Supp. 2d 47, 55-56 (D.D.C. 2012) (concluding that agency's search was reasonable because agency determined that all responsive records were located in a particular location created for express purpose of collecting records related to subject of request and searched that location). Courts have found that an agency's inability to locate a responsive record does not undermine an otherwise reasonable search. *Moore v. FBI*, 366 F. App'x 659, 661 (7th Cir. 2010) (noting that although agency had years earlier destroyed some potentially responsive records, that fact does not invalidate the search). In this case I find the IDA used the appropriate search terms and looked electronic databases most likely to produce responsive records. DNS-36's inability to produce responsive records does not undermine an otherwise adequate search.

I also find your arguments to otherwise undermine the IDA's search to not be compelling. First, I find your contention that the Navy acknowledged general awareness of the AATIP and that the service therefore must have responsive records to not otherwise undermine a reasonable search. Specifically, you quote Navy Spokesman Joseph Gradisher stating "[t]he AATIP program involved offices from across the Department of Defense, including Navy." After receiving your appeal my office researched that quote and found no evidence Mr. Gradisher made that statement. Even if he did, AATIP involvement by the Navy does not otherwise undermine a reasonable search, nor does it require the Navy to actually send records to the AATIP.

Second, you argue that Luis Elizondo, a supposed former director of AATIP, stated the organization received records from the various military services and therefore Navy records must exist. However, the Department of Defense specifically has stated Mr. Elizondo never served as the Director of the AATIP and his statements are pure speculation<sup>1</sup> that do not otherwise undermine the IDA search.

Third, AATIP was disbanded in 2012<sup>2</sup> and therefore any records you seek, if they ever existed, may have been permanently transferred, destroyed, or otherwise no longer able

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<sup>1</sup> "Mr. Elizondo had no responsibilities with regard to the AATIP program while he worked in OUSDI [the Office of Under Secretary of Defense for Intelligence]." The Media Loves This UFO Expert Who Says He Worked for an Obscure Pentagon Program. Did He? *The Intercept*, June 1, 2019. <https://theintercept.com/2019/06/01/ufo-unknown-history-channel-luis-elizondo-pentagon/>, last accessed March 13, 2020.

<sup>2</sup> *Glowing Auras and "Black Money": The Pentagon's Mysterious U.F.O. Program*, *The New York Times*, December 16, 2017.

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to be located by the IDA, therefore not undermining an otherwise reasonable search.

Therefore, as to your specific contentions that records must exist, you fail to argue why the IDA's search was not reasonable, I find these arguments to be meritless, and your appeal is denied.

Lastly, as to your argument that while your request has been forwarded to OSD, you want the Navy to be the initial denial authority because it could be the only authority to declassify records. In accordance with authorities under the FOIA if responsive records do exist, OSD will coordinate with appropriate original classification authorities to conduct a segregability analysis.

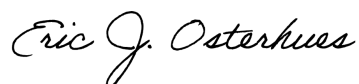
As the Department of the Navy's designated adjudication official for this FOIA appeal, I am responsible for the denial of this appeal. You may seek judicial review of this decision by filing a complaint in an appropriate U.S. District Court.

My office represents the U.S. government and is therefore unable to assist you in this process. You have the right to seek dispute resolution services by contacting the Department of the Navy's FOIA public liaison, Mr. Christopher Julka, at christopher.a.julka@navy.mil or at (703) 697-0031.

You may also seek dispute resolution services from the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, at (202) 741-5770 or ogis@nara.gov.

If you have further questions or concerns for my office, my point of contact is Maj James McKeon, USMC, who may be reached at james.mckeon@navy.mil or (202) 685-4596.

Sincerely,




E. J. OSTERHUES  
Director (Acting)  
General Litigation Division

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