

U.S. Department of
Homeland Security

United States
Coast Guard



Office of the Administrative Law Judge
United States Coast Guard

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28 September 2018

Shawn Musgrave
Muckrock News
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RE: DHS FOIA Appeal number 2018-HQAP-00190; FOIA Request Number: 2016-NPFO-00130

Dear Mr. Musgrave:

This letter concerns your appeal of the Department of Homeland Security (DHS) National Protection and Programs Directorate's (NPPD) response to your FOIA request 2016-NPFO-00130. In your initial request, you sought materials relating to records relating to "[a]ll training protocols developed by [DHS] components regarding the deployment and use of cell site simulators." As set forth below, I am **REMANDING** NPPD's response.

Pursuant to a memorandum of agreement, the United States Coast Guard Office of the Chief Administrative Law Judge is reviewing FOIA appeals for the Department of Homeland Security General Counsel's office. Therefore, the Office of the Chief Administrative Law Judge hereby renders the official appeal decision on behalf of the Department of Homeland Security.

On January 31, 2017, NPPD responded to your request informing you it performed a search, but was unable to locate any responsive records.

An agency is required to conduct a "reasonable search" pursuant to 5 U.S.C. § 552(a)(3) and each different agency makes the determination of where and how to search for responsive records. *Lechliter v. Rumsfeld*, 182 F. App'x 113, 115 (3d Cir. 2006) (holding that the agency fulfilled their duty to conduct a reasonable search when it searched two offices that it determined to be the only ones likely to possess responsive documents); *Brehm v. DOD*, 593 F. Supp. 2d 49, 50 (D.D.C. 2009) (finding that a search was reasonable where the agency searched two systems likely to have responsive records); *Knight v. NASA*, No. 04-2054, 2006 WL 3780901 (E.D. Cal. Dec. 21, 2006) (finding that there is no requirement that an agency search **all possible sources** in response to a FOIA request when it believes all responsive documents are likely to be located in one place). Furthermore, the agency is in the best position to determine how to best search for records in its systems.

Pursuant to relevant authority, the undersigned reviewed the Agency's response and was unable to determine whether an adequate search was indeed performed. Therefore, I am **REMANDING** this matter to allow the Agency 20 days to provide me with a more complete explanation of how and where it searched for records responsive to your request. Once I receive the response from the Agency, I, or another attorney, will issue a decision on your appeal.

If after twenty (20) days I have not received a response from the Agency, I or another attorney will issue you a letter providing final agency action so that you may enter federal court to pursue further relief.

Sincerely,

A handwritten signature in black ink, reading "Tommy Cantrell", enclosed in a thin black rectangular border.

Tommy Cantrell
Attorney Advisor
United States Coast Guard
U.S. Department of Homeland Security

Sent: Via email at the address indicated above.