Freedom of Information Act

FOIA Search Requirements of Base Servers

You have requested guidance concerning requirements to search a base Network Server when e-mails are requested under the Freedom of Information Act (FOIA). As discussed below, in our opinion, a base e-mail Network Server rarely needs to be searched to satisfy the requirement to conduct a reasonable search for requested records under the FOIA.

On 1 July 2015, Mr. X requested e-mails about him or otherwise related to his disciplinary case located at Base X, written by the Lt Colonel SJA between 1 January 2012 and 31 December 2013. From 1 January 2012 to July 2013, the Lt Colonel SJA was assigned to Base X, but moved to a new assignment in July 2013. The Lt Colonel took his Base X email files with him to his new assignment.

When Mr. X's FOIA request was received, the Lt Colonel searched his e-mails at his current assignment as well as his PST files from his assignment as an SJA at Base X, finding a few responsive e-mails. The Base X legal office also conducted a search of their files, to include their office sharedrive folders, but found no further records. No other offices at Base X were reasonably determined to have any e-mails written by the Lt Colonel about Mr. X. Mr. X appealed the FOIA search results, contending that the Base X e-mail Server should also have been searched for responsive e-mails.

The starting point for defining an agency's search obligations under the FOIA is the request itself. There are two requirements a FOIA requester must meet concerning his request for records before a federal agency will be required to search for responsive records: (1) the request must "reasonably" describe the records sought; and (2) the request must be made in accordance with the agency's FOIA regulations. *See* 5 U.S.C. § 552(a)(3)(A). The Air Force FOIA regulations are set forth in DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*.

A determination of whether or not a FOIA request reasonably describes the records sought turns on the ability of the agency to reasonably ascertain exactly what records are being requested and where to locate them. See *Yeager v. DEA*, 678 F.2d 315 (D.C. Cir. 1982). For example, in our view, a FOIA request simply seeking "all records that are about me" or that "have my name" does not reasonably describe the type of records being sought because no information is provided as to what specific Air Force offices might have records, or why any such emails about the subject may exist at a particular location. See *Dale v. IRS*, 238 F.Supp.2d 99 (D.D.C. 2002) (concluding that a request seeking "any and all documents…that refer or relate in any way" to the requester failed to reasonably describe specific types of records sought).

Once these request criteria are satisfied, an agency is required to undertake a search that is "reasonably calculated to uncover all relevant documents." See *Weisberg v. DOJ*, 705 F.2d 1344 (D.C. Cir. 1983); *Campbell v. United States*, 164 F.3d 20 (D.C. Cir. 1998) (noting an agency must search using methods which can be reasonably expected to produce the information requested); *Meeropol v Mees*, 790 F.2d 942, 956 (D.C. Cir. 1986) (noting that the FOIA doesn't require a perfect search, only a "reasonable" one); *Zemansky v EPA*, 767 F.2d 569 (9th Cir.

1985) (adequacy of an agency's search is judged by "reasonableness," which is case and fact specific).

An agency must make "a good faith effort to conduct a search for the requested records using methods which can be reasonably expected to produce the information requested." In those cases where courts have declined to order searches of e-mail Servers, they did so because of an agency determination of one or both of two things: (1) the 'unlikelihood' of finding records on the servers; or (2) the search itself would be unduly burdensome because of time, money, manpower, or mission impact. See *Hooker v HHS*, 887 F.Supp.2d 40 (D.D.C. 2012); *Ancient Coin Collectors Guild v DO*S, 866 F.Supp.2d 28 (D.D.C. 2012); *Conti v DHS*, 2014 U.S. Dist. Lexis 42544 (S.D.N.Y. 2014); *Nation Magazine v. U.S. Customs Serv*., 71 F.3d 885 (D.C. Cir. 1995) (an agency is not required to conduct unreasonably burdensome searches).

Although an agency can't "limit its search to only one record system if there are others that are likely to turn up the information requested," in our view, an agency is not required to search all relevant record systems if the responsive record can be retrieved from a particular record system in a less burdensome way. See *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); *Amnesty Int'l USA v. Cent. Intelligence Agency*, 728 F.Supp.2d 479, 497 (S.D.N.Y. 2010) (an agency need only search those systems in which it believes responsive records are likely to be located). Further, a search for records in a particular record system is unnecessary when a person familiar with the records maintained by the agency has determined it is reasonable to conclude that no responsive records would exist in that record system. See *American-Arab Anti-Discrimination Committee v. DHS*, 516 F.Supp.2d 83 (D.D.C. 2007). In particular, e-mails on base Server systems are maintained only for 90-120 days before deletion, according to Air Force record disposition schedules.

Applying the above legal principles, in our view it is unnecessary to search e-mail Servers for emails created beyond normal e-mail Server record retention periods, particularly when server administrators confirm emails are regularly purged from the Server in accordance with record disposition schedules. Further, most FOIA requests for emails, as was the case in Mr. X's request, are made long after emails are normally maintained on a Server; or, if they are still likely maintained on the email Server, are obtained in a less intrusive fashion by searching records maintained by the record OPR for the requested emails, such as office sharedrives, individual PST files, or individual computers.

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