



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:
Appeal No. 2015-004

June 2, 2015

Roger Derda

(b) (6)

Dear Mr. Derda:

This responds to the October 20, 2014, Freedom of Information Act (“FOIA”) appeal that you filed with the Department of the Interior (“Department”). Your appeal, which the Department assigned as **Appeal Number 2015-004**, concerns a September 4, 2014, FOIA request that you submitted to the Bureau of Indian Affairs (“BIA”) seeking:

[T]he correspondence (incoming and outgoing) of BIA Superintendent Charles J. Rives for the year 1960. Charles J. Rives was the Superintendent at the San Carlos Apache Agency. My request is for the following: (1) The location of the correspondence of BIA Superintendent Charles J. Rives (BIA Phoenix Regional Office?, San Carlos Agency? American Indian Records Repository (AIRR)? NARA? Other?) (2) For any/all correspondence involving Charles J. Rives (or anyone else) that mentions the word ‘coupons’, ‘scrip’, ‘tokens’, ‘metal scrip’ (or any other reference to same), in written communications, including but not limited to: individuals, the Commissioner of Indian Affairs, the San Carlos Apache Tribe (or Tribal Council), other.

In response to your FOIA request, the BIA’s San Carlos Agency advised you that “[a]fter a thorough and comprehensive search here at the Agency and the American Indian Records Repository [(“AIRR”)] in Lenexa, Kansas, no responsive records were located.” You also included with the appeal an e-mail message from AIRR to the BIA advising that “[d]espite searching one box, the requested information was not found.” You filed this appeal to challenge the BIA’s determination that it did not locate responsive documents, making much in the appeal of AIRR’s statement that it only searched one box. You also request additional information regarding the box searched for this FOIA request and seek a listing of any specific files searched in response to your possible future requests.

Your appeal is **DENIED**. Please be aware that the FOIA requires an agency to disclose, upon request by any person, non-exempt documents that are in its possession and control and are retrievable by a reasonable search of its files.¹ To decide appeals such as yours that challenge a bureau’s determination that it does not have or did not locate documents that are responsive to a FOIA request, the Department looks at whether the bureau conducted a reasonable search of its files in an effort to locate the requested materials. A reasonable search is one that is “reasonably calculated to uncover the sought materials.”² Where a bureau has conducted a reasonable search of its files to locate the requested documents, the Department will deem its search as adequate. The fact that a bureau does not locate documents that are responsive to a FOIA request does not mean that the search was not adequate. The bureau simply cannot produce documents that it does not have or cannot locate through a reasonable search.

¹ See 5 U.S.C. § 552(a)(3).

² See *Judicial Watch, Inc. v. United States DOE*, 310 F. Supp. 2d 271, 296 (D.D.C. 2004) (quoting *Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

Here, since the BIA does not have copies of the former Superintendent's files on site in its office, it contacted AIRR, which stores certain BIA records, for it to conduct a search of the files there to determine whether it had any documents that are responsive to the FOIA request. AIRR's search of a database of its records identified only one box regarding the former Superintendent's records. Therefore, it was appropriate for AIRR to focus its search for the requested materials on the only box that its records indicated it had that were likely to contain responsive documents.³

In searching the box of the Superintendent's records, AIRR personnel reviewed each record in an effort to locate responsive documents, looking for any of the key words from your FOIA request, e.g., "coupons," "scrip," "tokens," "metal scrip." However, AIRR's page-by-page review of the records in the box did not uncover anything responsive. To be sure, in connection with the appeal, AIRR personnel conducted a second review of the records in the box and again did not find responsive documents.

Because AIRR on behalf of the BIA manually searched the only file identified as likely to contain responsive documents and it looked for documents with any of the key words from the FOIA request, the Department concludes that the BIA has met its obligations under the FOIA to conduct a search that was reasonably calculated to uncover all relevant documents. Therefore, the Department concludes that the BIA's search was adequate and your appeal is **DENIED**.

If you are dissatisfied with the Department's determination that the search for documents that are responsive to your September 4, 2014, FOIA request was adequate, you have a right to seek judicial review under 5 U.S.C. § 552(a)(4)(B).

Finally, with regard to your request in the appeal for a listing of the specific records searched in response to this FOIA request and possible future ones, the Department refers you to the determination that it reached on another FOIA appeal that you filed where you requested "detailed, descriptive information regarding the nature of the search conducted at AIRR" and seeking to learn "what 'boxes' and 'databases' were researched."⁴ In the decision on that FOIA appeal, the Department advised you that "there is nothing in the FOIA, the Department's FOIA regulations, or current case law that requires an agency to provide a FOIA requester with the detailed search description that you seek." The Department also noted in the decision that "[s]ince the BIA is not required to provide you with the detailed description of the search it conducted during the administrative stages of the FOIA request...a decision on whether to provide you with such information is a matter of discretion on the part of the BIA."

The statute, regulations, and case law have not changed on the issue of whether an agency is required to provide a requester with a detailed search description during the administrative stages of a FOIA request. Thus, an agency's decision to provide such information remains discretionary.

³ Please be aware that the "FOIA was not intended to reduce government agencies to full-time investigators on behalf of FOIA requesters." *Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011). "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." *Knight v. NASA*, 2006 U.S. Dist. LEXIS 92414, *13-14 (E.D. Cal. Dec. 21, 2006) (citing *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)).

⁴ See May 29, 2012, decision on FOIA Appeal No. 2012-097.

Indeed, in this case, the Department discretionarily determined to provide you with details of the search conducted in response to your FOIA request in an effort to assist you in better understanding why AIRR searched only one box in response to the September 4, 2014, FOIA request and why such a decision and search were entirely reasonable. There is no further action that the Department will take on your request for a listing of the specific records searched here. Nor will the Department direct the BIA to provide you with such information in response to any future requests that you may file--any decision to provide you with information on the records searched will remain at the BIA's discretion.

This completes the Department's response to your appeal. If you have any questions regarding this matter, please call the FOIA Appeals Office at (202) 208-5339.

Sincerely,



Darrell R. Strayhorn
FOIA Appeals Officer
Department of the Interior

cc: Daniel Largo, FOIA Officer, BIA
Mary Nez, San Carlos Agency FOIA Coordinator, BIA
Cindy Cafaro, Departmental FOIA Officer