OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20460

April 24, 2026

Kyle Morning
[redacted]

RE: Freedom of Information Act Appeal No. 2026-EPA-03851 (Request No. 2026-EPA-00386)

Dear Kyle Morning:

I am responding to the above referenced Freedom of Information Act (FOIA) appeal, received by the U.S. Environmental Protection Agency (EPA) on March 31, 2026 (Appeal). You appealed the determination issued by Cheryl Seager of EPA's Region 6, dated March 11, 2026, and transmitted on March 31, 2026 (Determination). The Determination responded to FOIA Request No. 2026-EPA-00386, submitted to EPA on October 16, 2025, and received by EPA on October 23, 2025 (Request).

Your Request, in part, sought:

> [A]ll EPA records from June 25, 2025 to present concerning EPA complaints FY25-333810-3712-CV and FY25-336835-3714-CV about Walmart Supercenter #131, including complaint intake, referrals (e.g., to DSHS/TCEQ), internal and external communications (including with Angela Hays, Gerardo Acosta, Christina Gonzalez, Justin Mullenix, Sandesh Thapa, and Stan Lancaster), inspection/photographic files, determinations, and any enforcement or closing documentation. Please produce electronic copies, segregate non-exempt portions, and provide a fee waiver in the public interest (non-commercial use). […] (Date Range for Record Search: From 06/25/2025 To 10/16/2025).

The Determination granted your request and explained:

> EPA Region 6 has concluded its search and we are providing you a final release of responsive records. The records provided in this response are available through the EPA FOIAXpress Public Access Link (PAL) […] This letter concludes our response to your request.

Your Appeal challenged the adequacy of EPA's search and identified the following concerns:

A. Search Applied an Impermissibly Early Cutoff Date;
B. A Produced Record References a Document That Was Not Produced;
C. No Records Were Produced for a Specifically Named Custodian;
D. No Inspection, Determination, or Closure Records Were Produced;
E. Extensive Duplication Indicates a Narrow Search;
F. Records Were Produced in Degraded Format;
G. If Records Were Withheld, the Final Response Did Not Identify the Basis.

I carefully considered your Request, the Determination, and your subsequent Appeal. For the reasons set forth below, I have determined your Appeal should be, and is, granted. Therefore, pursuant to 40 C.F.R. § 2.108(e)(2), I am remanding your request for Region 6 to conduct a supplemental search, described in more detail below, to review all responsive records for any withholdings, and to release any reasonably segregable non-exempt information to you.

Analysis

In responding to a request for records, the FOIA requires an agency to make reasonable efforts to search for the requested records except when such efforts would significantly interfere with the operation of the agency's automated information system.[1] The "term 'search' means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request."[2] Generally, agencies must conduct a search that is "reasonably calculated to uncover all relevant documents."[3] "'[T]he adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search."[4] A search can be reasonable when it focuses on the records specifically mentioned in the request, or when it is based on a reasonable interpretation of the scope of the subject matter of the request.[5] The reasonableness of an agency's search can depend on whether the agency properly determined where responsive records were likely to be found, and searched

[1] 5 U.S.C. § 552(a)(3)(C).
[2] 5 U.S.C. § 552(a)(3)(D).
[3] *See, e.g., Campbell v. Soc. Sec. Admin.*, 446 F. App'x 477, 480 (3d Cir. 2011) (citing *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1350–51 (D.C. Cir. 1983)).
[4] *Jennings v. DOJ*, 230 F. App'x 1, 1 (D.C. Cir. 2007) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)); *Delorme v. EOUSA,* No. 12-0535, 2012 WL 5839513, at *1 (D.D.C. Nov. 16, 2012) (same); cf. *N.Y. Times Co. v. FCC*, 457 F. Supp. 3d 266, 276-77 (S.D.N.Y. 2020).
[5] See, *e.g., Larson v. Dep't of State,* 565 F.3d 857, 869 (D.C. Cir. 2009) (affirming adequacy of search based on agency's reasonable determination regarding records being requested and searched for accordingly); *Kidder v. FBI*, 517 F. Supp. 2d 17, 23-24 (D.D.C. 2007) (holding that, "based on plaintiff's clear request [that did not reference aliases], agency is under no obligation to search . . . any names other than [name stated in request]"); *Rothschild v. DOE*, 6 F. Supp. 2d 38, 40 (D.D.C. 1998) (declaring that agency is not required to search for records that "do not mention or specifically discuss" subject of request).

those locations.[6] In assessing methods used for a search, it can be sufficient to consult with a person knowledgeable of the topic of the request, and to inquire into the existence of responsive records.[7] When EPA makes an adverse determination, including that requested records do not exist,[8] then it must provide a brief statement of the reason or reasons for the denial.[9]

Regarding Region 6's initial search, my staff confirmed the search focused on records specifically mentioned in your Request, and was based on a reasonable interpretation of the scope of the subject matter of your Request. Specifically, the initial search parameters included: all custodians identified in your Request (*i.e.,* Angela Hays, Gerardo Acosta, Christina Gonzalez, Justin Mullenix, Sandesh Thapa, and Stan Lancaster); the identified date range in your Request (*i.e.,* 06/25/2025 To 10/16/2025); and reasonable key terms to cover the subject matter in your Request (*i.e.,* FY25-333810-3712-CV, FY25-336835-3714-CV, Walmart Supercenter #131, and Texas Department of State Health Services or DSHS). Of the responsive records located by the initial search, my staff confirmed that none were withheld from you, and all responsive records located by the initial search were produced to you in a standard production format (*i.e.,* PDFs). However, my staff also confirmed that the initial search was not reasonably calculated to uncover *all* relevant documents in that it did not involve all locations where responsive records may be found. As such, I find the initial search was deficient under the FOIA, and a supplemental search for responsive documents is necessary to address your Request.

Conclusion and Right to Judicial Review

Pursuant to 40 C.F.R. § 2.108(e)(2), I am remanding your Request to Region 6 to reprocess it in accordance with this decision. Specifically, for Region 6 to: 1) conduct a secondary review of all records located from the initial search to confirm responsiveness, and to conduct a supplemental search of all locations where responsive records may be found, including consultation with a subject matter expert, who would reasonably have knowledge and awareness of the existence of

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[6] See, e.g., *Karantsalis v. DOJ*, 635 F.3d 497, 500-501 (11th Cir. 2011) (affirming district court's determination that agency searched for records in system most likely to store responsive records and described how it retrieved records from system); *Lechliter v. Rumsfeld*, 182 F. App'x 113, 115-16 (3d 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. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990))); *Elec. Priv. Info. Ctr. v. FBI*, No. 17-00121, 2018 WL 2324084, at *3 (D.D.C. May 22, 2018) (finding search adequate where, based on consultation with subject matter experts, agency searched location in which responsive records stored).

[7] *Pub. Emps. for Env't Resp. v. U.S. Section Int'l Boundary & Water Comm'n*., 839 F. Supp. 2d 304, 317-18 (D.D.C. 2012) (concluding that agency's search was reasonable where its legal affairs staff assessed request and forwarded it to correct division, and employee with "significant experience" in the subject matter conducted search), aff'd in part, rev'd in part & remanded on other grounds, 740 F.3d 195 (D.C. Cir. 2014); *Amnesty Int'l USA v. CIA*, 728 F. Supp. 2d 479, 499-500 (S.D.N.Y. 2010) (concluding that "a search that included having the person most knowledgeable regarding [subject of request] inquire into the existence of [the records]" was thorough), aff'd in part, rev'd in part & remanded on other grounds, 539 F.3d 1143 (9th Cir. 2008), *Knight v. NASA*, No. 04-2054, 2006 WL 3780901, at *5 (E.D. Cal. Dec. 21, 2006) (stating 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").

[8] 40 C.F.R. §2.104(i)(3).

[9] 40 C.F.R. §2.104(j)(2).

the requested records; and 2) to review all responsive records for any withholdings, and to release any reasonably segregable non-exempt information to you. Region 6 will contact you within 10 business days of this determination with an estimated date of completion.

This letter constitutes EPA's final determination on this matter. Pursuant to 5 U.S.C. § 552(a)(4)(B), you may obtain judicial review of this determination by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or the district in which the records are situated, or in the District of Columbia. Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) within the National Archives and Records Administration was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; e-mail, ogis@nara.gov; telephone, 202-741-5770 or 1-877-684-6448; and fax, 202-741-5769.

Should you have any questions concerning this matter, please contact Kathleen Left at Left.Kathleen@epa.gov.

Sincerely,

Lynn Kelly
Assistant General Counsel
General Law Office

cc: Region 6