

National Aeronautics and Space Administration  
**Headquarters**  
Washington, DC 20546-0001



July 26, 2019

Reply to Attn of: Office of the General Counsel

Pierre Monteagudo  
[therojasfile@gmail.com](mailto:therojasfile@gmail.com)

Re: FOIA Appeal 19-JSC-F-00390

Dear Mr. Monteagudo,

In a letter dated April 16, 2019 received by the National Aeronautics and Space Administration (NASA or the Agency) you appealed a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et. seq.* The initial determination was issued by the NASA Headquarters FOIA Office (NASA HQ FOIA Office) on March 27, 2019. This is the Agency's final determination of your appeal.

## **BACKGROUND**

This appeal arises from a FOIA request submitted by you received by the NASA HQ FOIA Office on March 26, 2019 and assigned the FOIA Case Number 19-JSC-F-00390. In your request, you sought:

“Third application of the successive transformations method to the analysis of surveyor and lunar orbiter photographs. Report 4. By Hector R. Rojas, Ph.D. For NASA Manned Spacecraft Center, Houston (Texas), 1967.”

On March 27, 2019, the NASA HQ FOIA Office issued a response that the Agency was not able to locate the requested record after conducting searches in the Agency databases and the program offices at Johnson Space Center (JSC) and Langley Research Center (LaRC). The NASA HQ FOIA Office suggested that the study might be located at the National Archives and Records Administration (NARA) for permanent retention in accordance with The Federal Records Act (44 U.S.C. §§21, 29, 31, and 33) and NASA Records Retention Schedule (NPR 144.1D).

In your appeal, you challenged the adequacy of the search, attaching documents supporting the existence of the study in question. Based on the supporting documents you

provided you assert that "this important scientific study about the Moon can not have been eliminated from NASA. It's in some NASA file."

In your appeal letter, you make two requests. First, a request for a renewed search for the study in question. Your second request, states that "if this scientific study continues to be retained or classified... I want to know to whom I have to request its declassification." You then suggest that the study in question is "in the archives of NASA, perhaps Fort Worth and of course, in the Headquarters of NASA, in Washington, DC."

Your appeal has been reviewed and processed pursuant to applicable statutes, including the FOIA, 5 U.S.C. § 552, and NASA's FOIA regulations, 14 CFR Part 1206. The process involved an examination of our original request, all related correspondences, the initial determination, the NASA HQ FOIA Office's actions in conducting the search for the study in question, and your appeal.

### **DETERMINATION ON APPEAL**

Based upon this review, and in accordance with applicable statutes and regulations, I am affirming the NASA HQ FOIA Office's initial determination. Specifically, the NASA HQ FOIA Office's search was reasonable under the circumstances, and therefore adequate under the FOIA, 5 U.S.C. § 552, for the reasons set forth below.

### **DISCUSSION**

The FOIA provides that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A). Records are reasonably described if the description "enable[s] a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort."

The reasonableness of an agency's search depends, in part, on how the agency conducted its search in light of the scope of the request and the requester's description of the records sought. See Zavala v. DEA, No. 09-5357, 2010 U.S. App. LEXIS 11582 (D.C. Cir. June 7, 2010) (Per curiam). The adequacy of an agency's search "depends on the methods used, not on the records revealed or not revealed" and, accordingly, is not undermined by "an agency's failure to turn up a particular document."; Batton v. Evers, No. 08-20724, 2010 WL 625988 (5th Cir. Feb. 24, 2010) (Haynes, J.). ("We conclude that, based on [defendants'] declarations, the IRS has demonstrated that it performed a search reasonably calculated to yield responsive documents." In Hidalgo v. FBI, the court held that "[a] reasonably calculated search does not require an agency to search every file where a document could possibly exist, but rather requires that the search be reasonable in light of the totality of the circumstances." Hidalgo v. FBI, No. 10-5219, 2010 WL 5110399 (D.C. Cir. Dec. 15, 2010) (per curiam).

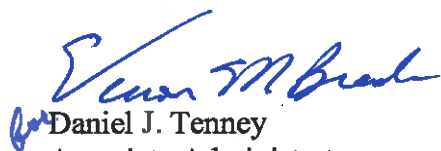
In your appeal letter, you assert that the Agency failed to conduct an adequate search for records responsive to the request. In searching for the study in question, the NASA HQ FOIA Office conducted a search of the NASA HQ archives. After the NASA HQ FOIA Office searched through its own records and databases for the study in question, it contacted the JSC FOIA Office. The NASA HQ FOIA Office also forwarded the two cover letter documents you provided in your e-mails to the JSC FOIA Office. The JSC FOIA Office was unable to find the requested study in its own respective archives. Further, NASA HQ FOIA Office contacted the LaRC FOIA office and that office conducted a search of its archives that did not find any responsive records to your request. Then the NASA HQ FOIA Office contacted the LaRC office that catalogued Dr. Rojas' other three studies. The LaRC officer was also unable to find the study in question (Dr. Rojas' fourth study). Further, the three NASA FOIA offices (NASA HQ, JSC, and LaRC) searched through the NTRS- Registered, the NASA Library catalog, Worldcat, and the National Technical Reports Library and did not find any records responsive to your request.

After this search, the NASA HQ FOIA Office issued its initial determination informing you that no responsive records were located.

In your appeal, you inquire if the study in question is classified, or otherwise restricted under federal law. Given that NASA's search did not locate any responsive documents related to your request, NASA does not have any information concerning the current classification of the study in question. Thus, NASA is unable to make a determination on the classification of the study. Based upon my review of the description of the records sought and the search conducted, I find that the search was adequate based upon the facts presented above.

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 301-837-1996; toll free at 1-877-684-6448, facsimile at 301-837-0348

Sincerely,



Daniel J. Tenney  
Associate Administrator  
Mission Support Directorate

Enclosure