United States Department of Energy Office of Hearings and Appeals

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Iccuad) Case No. FIA-14-0015 March 6, 2014
Filing Date: February 21, 2014)
In the Matter of Bill Streifer)

This Decision concerns the Appeal that Bill Streifer filed from a determination that the Office of Science Integrated Support Center - Chicago Office (ISC-CH) of the Department of Energy (DOE) issued to him on January 30, 2014. In that determination, the ISC-CH responded to his request under the Freedom of Information Act, 5 U.S.C. § 552, as the DOE implemented in 10 C.F.R. Part 1004. This Appeal, if granted, would require ISC-CH to perform an additional search and either release newly discovered records or issue a new determination justifying its withholding of records.

I. Background

Mr. Streifer filed a FOIA request with ISC-CH for "all communications and documentation concerning Fritz J. Hansgirg's U.S. Patent #2,156,851 which was in possession of the Argonne National Laboratory prior to November 21, 1942, when Urey and Gross[e] filed U.S. Patent #2,690,379" and "all documents that may shed light on how and when Urey and Grosse learned of, obtained, and utilized Fritz Hansgirg's November 10, 1936, heavy water patent during the Trai[I], B.C. heavy water plant's design stage." Determination Letter at 1. ISC-CH conducted a search for responsive documents which did not locate any responsive documents. On January 30, 2014, ISC-CH issued a Determination Letter to Mr. Streifer, informing him that a search for responsive documents had been conducted in response to his request, but that no responsive documents had been located. Mr. Streifer then filed the present Appeal with the Office of Hearings and Appeals (OHA), challenging the adequacy of the ISC-CH's search. Appeal Letter.

¹ The Argonne National Laboratory did not exist until July 1, 1946. http://www.anl.gov/about-argonne/history.

II. Analysis

In responding to a request for information filed under the Freedom of Information Act (FOIA), an agency must "conduct[] a search reasonably calculated to uncover all relevant documents." *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Dep't of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where the search was inadequate. *Aurimas Svitojus*, Case No. TFA-0349 (2010) (remanding where the site office performed no search).²

We contacted the ISC-CH to gain additional information to evaluate the adequacy of its search. ISC-CH informed us that it conducted an extensive search for documents responsive to Mr. Streifer's request. E-Mail Messages dated February 25, 2014, from Miriam Bartos, ISC-CH FOIA Officer, to Steven L. Fine, OHA Staff Attorney. ISC-CH's FOIA Officer informed us that ISC-CH had Argonne National Laboratory (Argonne) employees conduct an electronic search of its ARMIR (Argonne Records Management and Information Resource) database. ARMIR is Argonne's database of inactive (including historical) records stored off-site. Argonne used the following search terms in its search of the ARMIR database: "Hansgirg," "Urey," "Grosse," "deuterium," "heavy water" and "trail." ISC-CH's Office of Chief Counsel - Intellectual Property section also conducted an electronic search of its Patent Management Information System database that processes and tracks inventions disclosures received from various DOE Laboratories (including Argonne National Lab), financial assistance recipients and DOE contractors and subcontractors, and conducted a physical search of its patent records for U.S. Patent No. 2,156,851 issued to Fritz Hansgirg or any documents that shed light on how and when inventors Urey and Grosse may have learned of, obtained, or utilized the patent No. 2,156,851.

Based on the description of the ISC-CH's search, we find that it conducted a search that was reasonably calculated to uncover all relevant records and was therefore adequate. Therefore, we will deny the Appeal.

It Is Therefore Ordered That:

- (1) The Appeal that Bill Streifer filed on February 21, 2014, OHA Case No. FIA-14-0015, is denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at http://www.energy.gov/oha.

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Poli A. Marmolejos Director Office of Hearings and Appeals

Date: March 6, 2014