

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Martin Becker)	
)	
Filing Date: April 15, 2014)	
)	Case No. FIA-14-0024
_____)	

Issued: May 8, 2014

Decision and Order

This Decision concerns the Appeal that Martin Becker filed from a determination (FOIA Request No. HQ-2014-00330-F) that the Department of Energy’s (DOE) Office of Information Resources (OIR) issued to him on April 9, 2014. In that determination, OIR 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 OIR to perform an additional search and either release newly discovered records or issue a new determination justifying its withholding of records.

I. Background

On December 17, 2013, Mr. Becker filed a FOIA request with OIR for “a copy of any and all correspondence including but not limited to emails, memorandums, phone logs and logs of conversations” to and from two individuals within the DOE, that he described only as "Jim" and "David," between August 9, 2013, and December 17, 2013, regarding Mr. Becker or any matters relating to Mr. Becker. February 20, 2014, Determination Letter at 1. On February 20, 2014, OIR issued a Determination Letter to Mr. Becker, informing him that a search for responsive documents had been conducted in response to his request, which located 10 responsive documents. The February 20, 2014, Determination Letter further withheld some of the responsive information under Exemption 6.¹ Nevertheless, OIR released 67 pages of responsive documents to Mr. Becker. On March 12, 2014, Mr. Becker filed an Appeal challenging the adequacy of OIR’s search. *Martin Becker*, OHA Case Number, FIA-14-00018. As a result of our discussions with OIR, OIR agreed to withdraw the February 20, 2014, Determination Letter, and issue a new Determination Letter in response to Mr. Becker’s December 17, 2013, FOIA request. Accordingly we dismissed Mr. Becker’s March 12, 2014, Appeal. March 26, 2014, Dismissal Letter at 1. On April 9, 2014, OIR issued a new Determination Letter to Mr. Becker, in which it stated that it conducted a further search for responsive documents. *Id.* OIR identified

¹ The February 20, 2014, Determination Letter does not clearly describe the specific information that OIR withheld under Exemption 6. Nevertheless, Mr. Becker does not challenge OIR’s withholdings under Exemption 6. Appeal at 1.

one additional responsive document that it had located as a result of this further search. *Id.* OIR released a redacted version of this document to Mr. Becker from which OIR withheld information under Exemption 6.² *Id.* On April 15, 2014, Mr. Becker filed the present Appeal with OHA, challenging the adequacy of the OIR's search. April 15, 2014, Appeal at 1.

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).³

In the instant case, we once again contacted the OIR to gain additional information to evaluate the adequacy of its search. OIR informed us that it conducted an extensive search for documents responsive to Mr. Becker's request. While OIR could not identify any employee named "David" who recalled speaking with Mr. Becker, between August 9, 2013 and December 17, 2013, OIR did identify "Jim" as Jim Secreto. On March 14, 2014, Mr. Secreto provided this office with a memorandum describing his search for responsive documents. This memo states in pertinent part:

In early January, I was contacted regarding [Mr. Becker's FOIA request]. That day, I conducted a search of my hard-copy and electronic records for documents dated August 9th, 2013[,] to December 17, 2013[,] that were responsive to Mr. Becker's request. Electronic search terms included "Martin" and "Becker" and "Martin Becker." Hard-copy searches included reviewing paper documents in my desk and file cabinet.

* * *

When I learned of the FOIA appeal on March 14, 2014, I asked my colleague . . . to review the documents I provided in response to the initial FOIA.⁴ She identified one additional document that is responsive to Mr. Becker's request.

² Mr. Becker does not challenge OIR's withholdings under Exemption 6. April 15, 2014, Appeal at 1.

³ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.energy.gov/oha>.

⁴ Mr. Secreto's colleague informed this office that she also conducted a search of her electronic and hard copy records in response to Mr. Becker's FOIA request. March 14, 2014, email to James Secreto. This search identified one additional one-page record which was released to Mr. Becker by the April 9, 2014, Determination Letter.

March 14, 2014, Memorandum from James Secreto to the Office of Hearings and Appeals.

Based on the description of the OIR'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 Martin Becker filed on April 15, 2014, OHA Case No. FIA-14-0024, 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.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer 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. You may contact OGIS in any of the following ways:

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Director
Office of Hearings and Appeals

Date: May 8, 2014