

United States Department of Energy
Office of Hearings and Appeals

In the matter of Advanced Technology Corporation.)
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Filing Date: October 15, 2012) Case No.: FIA-12-0065
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Issued: October 31, 2012

Decision and Order

On October 15, 2012, the Advanced Technology Corporation (“Appellant”) filed an Appeal from a determination issued to it on September 27, 2012, by the Oak Ridge Office (ORO) of the Department of Energy (DOE) (FOIA Request Number ORO-2012-01563-F). In its determination, ORO responded to the Appellant’s request for information filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE in 10 C.F.R. Part 1004. Specifically, the Appellant contends that there should be additional documents that are responsive to its FOIA request, which ORO has not produced. Thus, this Appeal, if granted, would require ORO to conduct another search for the documents that the Appellant requested.

I. Background

On June 27, 2012, the Appellant submitted a FOIA request to ORO requesting copies of

email and fax correspondence between Roger Stoller, employee of ORNL [Oak Ridge National Laboratory], and members of ASTM International or others as a group or individually, including: Frontics, Kwang-ho Kim, Frontics [and] Dongil Kwon, Seoul National University specifically discussing Automated Ball Indentation (ABI), Instrumented Indentation Testing (IIT), Fahmy Haggag, or Advanced Technology Corporation (ATC) from 1997 to 2012.

On September 27, 2012, ORO issued a determination, informing the Appellant that after conducting a search, it found no records that responded to its request.

In the instant Appeal, the Appellant challenges the adequacy of ORO’s search, stating that it possesses a copy of an email sent to Dr. Stoller from Kwang-ho Kim, dated April 26, 2010, which ORO should have produced in response to its June 27 FOIA request along with the

email's attachments. The Appellant further states that it received documents sent to both of Dr. Stoller's email addresses at ORNL through a previous FOIA request, suggesting that additional responsive documents should have been located by ORO in response to its June 27 FOIA request.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must conduct a search "reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (quoting *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). "[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 it is evident that the search conducted was in fact inadequate. See, e.g., *Project on Government Oversight*, Case No. TFA-0489 (2011).¹

In response to our inquiries, ORO provided us with additional information to evaluate the reasonableness of its search. ORO informed us that it contacted Dr. Stoller, who stated that in May 2012, he produced all responsive documents – emails, email attachments, and faxes – to the Appellant pursuant to an earlier FOIA request (FOIA Request Number ORO-2012-00826). Email from Linda Chapman, Legal Assistant, FOIA/Privacy Act Office, to Shiwali Patel, OHR, Attorney-Examiner, Oct. 18, 2012. Dr. Stoller further asserted that in September 2012, upon receiving the June 27 FOIA request from the Appellant, he performed an electronic search of all of his emails using the names, firms, and institutions described in the June 27 FOIA request between the years 1997 and 2012. *Id.* However, he found no additional responsive records. After the Appellant filed the instant Appeal, Dr. Stoller conducted another search – this time of his email files in the UT-Battelle/ORNL servers – using the above-listed terms from the Appellant's June 27 FOIA request. Again, he did not find any new emails since the last production of documents to the Appellant in May 2012. *Id.* Dr. Stoller also informed ORO that he searched other possible locations that could have the requested documents, but he did not locate additional responsive documents.

In response to the Appellant's assertion that he had a copy of an email dated April 26, 2010, which was sent to Dr. Stoller from Mr. Kwang-ho Kim, Dr. Stoller avers that he did not retain that email and accordingly, he was not able to produce it in response to the Appellant's June 27 FOIA request.

Based on the foregoing, we are satisfied that ORO has conducted an adequate search for documents that are responsive to the Appellant's June 27 FOIA request. As stated above, the standard for agency search procedures is reasonableness, which "does not require absolute exhaustion of the files." *Miller*, 779 F.2d at 1384-85. Here, ORO has conducted a reasonable search as evidenced by the description of the search conducted by Dr. Stoller. Despite having already searched for and produced responsive documents based on the Appellant's previous

¹ Decisions issued by the Office of Hearings and Appeals (OHA) after November 19, 1996, are available on the OHA website located at <http://www.oha.doe.gov>.

FOIA request in May 2012, Dr. Stoller conducted two additional searches of his email files from 1997 to 2012 in response to the Appellant's June 27 FOIA request and October 15 Appeal. Still, he found no additional responsive documents. As Dr. Stoller demonstrated that he conducted a thorough electronic search of his email files using the above-listed terms, we find that ORO conducted an adequate search in response to the Appellant's June 27 FOIA request. Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by the Appellant on October 15, 2012, OHA Case Number FIA-12-0065, is hereby 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.

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Director
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Date: October 31, 2012