

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

In the Matter of Robert J. Thompson	)	
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Filing Date: November 28, 2016	)	Case No.: FIA-16-0055
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Issued: December 19, 2016

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**Decision and Order**

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On November 28, 2016, Robert J. Thompson (Appellant) appealed determinations received from the Department of Energy’s (DOE) Office of Information Resources (OIR) and Oak Ridge Office (ORO) (Request No. HQ-2016-00404-F and Request No. ORO-2016-01322-F). OIR and ORO responded to a request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. The Appellant challenges the adequacy of OIR’s and ORO’s search for responsive documents. As explained below, we have determined that the Appeal should be denied.

**I. Background**

On January 4, 2016, the Appellant requested “the present location of any and all currently classified patent applications for Dr. James Brusie and all of the solicited written declassification reviews bearing on Dr. James Brusie’s patent application<sup>1</sup>.” Determination Letter from Alexander C. Morris, FOIA Officer, OIR, to Mr. Robert J. Thompson (September 29, 2016).

On September 6, 2016, ORO sent the Appellant a letter stating that ORO conducted a search to locate the requested records and found no responsive documents. Determination Letter from Linda G. Chapman, Authorizing Official, ORO, to Mr. Robert J. Thompson (September 6, 2016). On September 29, 2016, OIR sent the Appellant a letter stating that it assigned the request to the Office

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<sup>1</sup> ORO characterized the Appellant’s request as a request for (1) the present location of any and all currently classified patent applications; (2) the specific date of a memo authored by Gabe Marciante, and (3) written declassification reviews on the sole patent application attributed to Dr. James Brusie. Determination Letter from Linda G. Chapman, Authorizing Official, ORO, to Mr. Robert J. Thompson (September 6, 2016). The Appellant does not challenge either description of the FOIA request and the requested information, had it been available, would have been located under either OIR’s or ORO’s interpretation.

of Environment, Health, Safety and Security (EHSS) and the Office of General Counsel (GC) to conduct a search of their records for responsive documents. Determination Letter from Alexander C. Morris, FOIA Officer, OIR, to Mr. Robert J. Thompson (September 29, 2016). After completing their searches, neither of the offices located any responsive documents. *Id.* On November 28, 2016, the Appellant appealed these determinations. Email from Robert J. Thompson to OHA Filings (November 27, 2016).

## II. Analysis

The FOIA requires that a search be reasonable, not exhaustive. “[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 v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). In cases such as these, “[t]he issue is *not* whether any further documents might conceivably exist but rather whether the government’s search for responsive documents was adequate.” *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1981) (emphasis in original). 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).<sup>2</sup>

We contacted EHSS, GC, and ORO to determine how the search was conducted in this matter. EHSS informed us that it searched the patent records kept in their office. Memorandum of Telephone Conversation between Edie Chalk, EHSS, and Brooke DuBois, OHA (December 8, 2016). EHSS indicated that the office only kept records of patents with secrecy orders currently in place and that any patents with lifted secrecy orders would likely be held with the U.S. Patent and Trademark Office. *Id.* GC informed us that the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property manually searched its records using the keywords “Brusie,” “Urey,” and “Libby,” but found no responsive documents. Email from Linda Field, GC, to Brooke DuBois, OHA (December 8, 2016). ORO informed us that it contacted its Assistant Chief Counsel for Intellectual Property and Technology Transfer about responsive documents, and they indicated that GC would have any classified patents but that the ORO classification office might have the other items requested by the Appellant. Email from Linda G. Chapman, ORO, to Brooke DuBois, OHA (December 13, 2016). ORO’s classification office then searched its Records Holding Area but did not find any responsive documents. *Id.*

## III. Conclusion

Based on the foregoing, we find that EHSS, GC, and ORO conducted searches reasonably calculated to uncover materials sought by the Appellant, and that the searches were therefore adequate. Thus, we will deny the present Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on November 28, 2016, by Robert J. Thompson, Case No. FIA-16-0055, is hereby denied.

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

- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 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: December 19, 2016