

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

In the Matter of Michael Best	)		
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Filing Date: December 15, 2016	)	Case No.:	FIA-16-0059
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Issued: December 27, 2016

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**Decision and Order**

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On December 15, 2016, Michael Best (Appellant) appealed a determination received from the Department of Energy’s (DOE) Office of Scientific and Technical Information (OSTI). OSTI 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 OSTI’s search for responsive documents. As explained below, we have determined that the Appeal should be denied.

**I. Background**

On December 12, 2016, the Appellant requested “any and all materials produced for, received by or relating to President-Elect Trump’s Transition Team, including any questionnaires relating to the transition, the incoming administration or produced by the Transition Team for your agency.” Transfer Letter from Madelyn Wilson, DOE/OSTI FOIA Officer to Michael Best (December 15, 2016). On December 15, 2016, OSTI sent the Appellant an email with the subject “Transfer Letter” in which OSTI informed the Appellant that “[a]fter reviewing [his] request and with external consultation, it was determined that OSTI does not have responsive documents that are compliant to your FOIA search request.” *Id.* Based on this, OSTI transferred the FOIA request to the DOE’s Office of Information Resources (OIR) for further processing. *Id.* On December 15, 2016, the Appellant appealed.<sup>1</sup> Appeal Email to OHA Filings from Michael Best (December 15, 2016).

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<sup>1</sup> After receiving this Appeal, OHA attempted to contact the Appellant to inquire if he wanted to hold his Appeal until OIR had completed its search for responsive documents. Email from Brooke DuBois, OHA, to Michael Best (December 15, 2016). The Appellant never responded to OHA’s request, therefore, we have proceeded with processing the Appeal.

## 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 OSTI to determine how the search was conducted in this case. OSTI informed OHA that it knew immediately that OSTI would not have any documents responsive to the FOIA request because it had no contact with the Transition Team. Memorandum of Telephone Conversation between Madelyn Wilson, OSTI, and Brooke DuBois, OHA (December 20, 2016). OSTI sought guidance from OIR, the DOE Headquarters FOIA office, which instructed OSTI to transfer the FOIA request to its office, which has had contact with the Transition Team, for further processing. *Id.* OSTI did not conduct any search of its records before transferring the request. *Id.*

OSTI’s transfer of the request to OIR, the office most likely to have responsive documents, is consistent with the FOIA. See 5 U.S.C. § 522(a)(6)(A); see also *FOIA Post*, “OIP Guidance: New Requirement to Route Misdirected FOIA Requests” (posted 11/18/08). Additionally, courts have found that a search is unnecessary when a person familiar with the records maintained by the agency determines that no responsive records are, in fact, maintained. See *Thomas v. Comptroller of the Currency*, 684 F. Supp. 2d 29, 33 (D.D.C. 2010) (affirming agency’s decision not to search when it determined that given its system of records, “there was no reasonable expectation of finding responsive documents”). In this case, OSTI determined that because it has not had any contact with the Transition Team that it would not have any records responsive to the FOIA request and, therefore, was not required to conduct a search for documents it knew did not exist.

## III. Conclusion

Based on the foregoing, we find, in light of OSTI transferring the Appellant’s FOIA request to OIR for further processing, that OSTI’s search in this matter was adequate. Thus, we will deny the present Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on December 15, 2016, by Michael Best, Case No. FIA-16-0059, 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 the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may

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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).

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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Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

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