

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

In the Matter of Bill Streifer )  
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Filing Date: July 26, 2017 ) Case No.: FIA-17-0023  
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Issued: August 10, 2017

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**Decision and Order**

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On July 26, 2017, Bill Streifer appealed a determination issued by the Department of Energy’s (DOE) Office of Public Information (OPI) on July 10, 2017 (Request No. HQ-2017-00351-F). In that determination, OPI responded to a request that Mr. Streifer 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. Mr. Streifer challenges the adequacy of the DOE’s search for documents responsive to his request. As explained below, we have determined that the Appeal should be denied.

**I. Background**

Mr. Streifer filed a FOIA request for a “copy of the Index of U.S. and foreign patents relating to the Manhattan Project, as referred to in Manhattan District History . . .” Determination Letter, July 10, 2017, at 1. In a determination issued on July 10, 2017, the DOE identified and released to Mr. Streifer two documents responsive to his request: spreadsheets of U.S. and foreign patents applied for during that period, from which information was withheld pursuant to Exemption 3 of the FOIA.

In his Appeal, Mr. Streifer challenges the adequacy of the DOE’s search.<sup>1</sup> First, he explains that the first column of each index lists an “S” number in sequential order. He notes that there are gaps in the numbering sequence, which leads him to believe that some patents were omitted from these lists. Moreover, he offers as an example of omitted information a contract and certain patents concerning heavy water production that he contends related to the Manhattan Project but do not appear in either index. Their absence further supports his contention that these indexes, taken

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<sup>1</sup> Mr. Streifer initially appealed the withholding of the redacted portions of the indexes, and indicated that a contract and certain patents concerning heavy water production did not appear in the indexes he received. He stated that he could not ascertain the reason for their absence: whether they were among the withheld material or whether they had not been captured in the indexes at all. The DOE office charged with reviewing the application of Exemption 3 to withhold classified information determined that they were not among the withheld material. When apprised of that fact, Mr. Streifer revised his appeal to its present form.

together, are incomplete and that the search for responsive information was not adequate. E-mail from Bill Streifer to Office of Hearings and Appeals (OHA) (July 25, 2017).

## 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., Ralph E. Sletager*, OHA Case No. FIA-14-0030 (2014).

To determine the adequacy of the department’s search for documents responsive to Mr. Streifer’s request, we questioned the office that assembled the response. According to the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property (GC-62), the Office of the General Counsel (GC) maintains information for the DOE on inventions, patents, and patent applications developed or funded by the DOE, DOE laboratories, and DOE contractors using DOE funds and funds of its predecessor agencies.<sup>2</sup> That office created the indexes that were provided to Mr. Streifer in order to respond to his request. It organized the information in those indexes by “S” number. Each invention developed as defined above was assigned an “S” number in chronological order; the indexes present information for each such invention for which either a United States or foreign patent application was filed. E-mail from Robert Burns, GC-62, to William Schwartz, OHA (July 27, 2017). GC-62 defined the scope of its indexes to include all “S” numbers starting with “S-000001,” which predated the Manhattan Project by a number of years, and ending with those “S” numbers assigned through December 31, 1946, a date beyond the termination of the project. Memorandum of Telephone Conversation between Burns and Schwartz (July 26, 2017).

With respect to Mr. Streifer’s concerns about the completeness of the information provided to him in the indexes, GC-62 provided the following explanations. Patent applications were not filed for all DOE inventions; for that reason, gaps appear in the numerical sequence of “S” numbers listed on the indexes wherever an invention was recorded but no patent was applied for. Moreover, the data that GC maintains about patents from the Manhattan Project era concern only those patents arising from inventions developed by the DOE, its laboratories and contractors, and its predecessors using DOE or predecessor-agency funding. *Id.* It would not likely have records of the patents Mr. Streifer describes in his Appeal as those patents do not appear to have been developed or funded by the entities listed above, and therefore do not fall within the scope of the records GC maintains for the DOE.

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<sup>2</sup> GC also maintains information on a very limited category of patent applications filed by non-DOE parties. The authority for maintaining that information, however, was not granted until 1952, six years after the termination of the Manhattan Project. Memorandum of Telephone Conversation between Robert Burns, GC-52, and William Schwartz, OHA (August 8, 2017). For that reason, I find that the DOE maintains no information on Manhattan Project-era patents other than those developed or funded by the DOE, DOE laboratories, and DOE contractors using DOE funds and funds of its predecessor agencies.

Based on the foregoing, we find that NNSA conducted a search reasonably calculated to uncover the materials that Mr. Streifer sought, and that its search was therefore adequate under the FOIA. Consequently, we deny the present Appeal.

### **III. Order**

It is hereby ordered that the Appeal filed on July 26, 2017, by Bill Streifer, Case No. FIA-17-0023, is denied.

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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Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

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