

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

In the Matter of Bill Streifer)	
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Filing Date: July 31, 2017)	Case No.: FIA-17-0024
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Issued: August 10, 2017

Decision and Order

On July 31, 2017, Bill Streifer (Appellant) filed an Appeal from a determination issued by the Department of Energy (DOE) Office of Scientific and Technical Information (OSTI) (Request No. OSTI-2017-01485-F). In that determination, 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. This Appeal, if granted, would require an additional search for responsive information.

I. Background

OSTI is the DOE office that collects, preserves, and disseminates DOE-sponsored research and development results that are the outcomes of research and development projects, or other funded activities, at DOE labs and facilities nationwide and with grantees at universities and other institutions. Email from OSTI to OHA (August 1, 2017) (“OSTI Email”). On July 24, 2017, the Appellant filed a FOIA request with OSTI in which the Appellant sought “all documents concerning the U.S. and/or Canadian patents used to produce the heavy water at Cominco and the royalties paid, if any.” Determination Letter (July 28, 2017). Cominco references Consolidated Mining and Smelting Company of Canada Limited at Trail, British Columbia, Canada. *Id.* In response, OSTI conducted a search of the files in its office and failed to locate any responsive documents. *Id.*

On July 31, 2017, the Appellant challenged OSTI’s determination. Appeal Letter at 1 (July 31, 2017). In the Appeal, the Appellant references a passage from a book that states certain individuals developed catalysts that were used in the production of heavy water at Cominco sometime after the mid-1940s. *Id.* The Appellant also states that two of those individuals received U.S. patents for the catalysts. *Id.* Based on the Appellant’s research, he located three “U.S. and/or Canadian patents

used to produce the heavy water at Cominco” *Id.* The Appellant relies upon the above information to challenge the adequacy of OSTI’s search. *Id.* at 2. In a discussion with the Appellant, he clarified that his Appeal also challenges the fact that DOE did not conduct a search for records outside of OSTI. Memorandum of Telephone Conversation between OHA and Bill Streifer (August 4, 2017).¹

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.” *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). The standard of reasonableness we apply “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., Ralph Sletager*, Case No. FIA-14-0030 (2014).²

OSTI provided our office with information regarding the search it conducted to process the Appellant’s FOIA request. Initially, OSTI determined that any responsive records possessed by DOE would most likely be located within OSTI. Memorandum of Telephone Conversation between OSTI and OHA (August 3, 2017) (“OSTI Memorandum I”). However, OSTI also realized that information related to the payment of royalties would probably not be the type of information stored within its records. *Id.* To process the request, OSTI conducted a search of its electronic databases which contain information gathered from the results of DOE-funded research and development. *Id.* The submission of this information is a condition of receiving DOE funding for research and development. *Id.* This information is collectively referred to as scientific and technical information (STI), and it is composed of technical documents, conference papers, articles, multimedia, and software. OSTI Email. OSTI also explained that although they have a large collection of old, non-digital files, the information is cataloged so that the metadata of the non-digital files is searched during a search of its electronic databases. OSTI Memorandum I.

Using the search terms “Consolidated Mining and Smelting Company of Canada,” “heavy water,” and “patent,” OSTI searched through four databases. OSTI Email. These four databases compose the entire corpus of its electronically available scientific and technical information. Memorandum of Telephone Conversation between OSTI and OHA (August 4, 2017). First, OSTI searched the Energy Link System (E-Link). OSTI Email. E-Link is a database used by researchers and grantees to upload STI. *Id.* Once received, the information in E-Link is reviewed by OSTI and then stored in either a restricted or publicly accessible database such as SciTech Connect. OSTI Memorandum I. The E-Link search did not yield any responsive documents. OSTI Email. Next, OSTI searched its classified database. *Id.* This database houses sensitive STI. OSTI Memorandum I. The search

¹ The Appellant also argues that OSTI should have provided him with information directing him to other agencies that may hold the information he requested. Memorandum of Telephone Conversation between OHA and Bill Streifer (August 4, 2017). However, the FOIA does not require OSTI to advise the Appellant regarding additional requests to agencies outside of DOE.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at www.energy.gov/oha.

of this database did not yield any responsive documents. OSTI Email. Third, OSTI searched its DOEpatents database. *Id.* The DOEpatents database houses information related only to patents sponsored by DOE through a grant, contract, cooperative agreement, or similar type of funding mechanism from 1970 to the present. Determination Letter. The DOEpatents database search did not yield any results. OSTI Email. Lastly, OSTI searched its Science Research Connection (SRC) database. *Id.* The SRC is an STI database that is only available to DOE offices and contractors. OSTI Memorandum I. This last search yielded four results; however, once OSTI reviewed the documents, it determined that they were not responsive to the Appellant's FOIA request. OSTI Email.

Based on the foregoing, we cannot find that OSTI conducted a search reasonably calculated to uncover all relevant documents within DOE. As an initial matter, we conclude that OSTI conducted an adequate search to discover any responsive records that may exist within OSTI. OSTI searched its research and patent databases using relevant search terms, reviewed each result for relevance, and determined that none of the documents were responsive to the Appellant's request. Additionally, the scope of its search was directed by the fact that the Appellant mailed the original request directly to OSTI. However, the broad language of the Appellant's request goes beyond any records that may be contained within OSTI. For instance, DOE has a separate patent office within its Office of General Counsel. Armed with that knowledge, a search for "all records" involving U.S. or Canadian patents may include a search of the latter office's records. Furthermore, information related to the payment of royalties may be located within other offices inside DOE. Accordingly, we find that an adequate search was not conducted to find all departmental records responsive to the Appellant's request. Since OSTI has already conducted an adequate search of its records, we will refer the matter to the DOE Office of Public Information (OPI) for further processing.³

III. Conclusion

For the reasons stated above, we conclude that while OSTI conducted an adequate search for responsive records within its office, an adequate search was not conducted to discover responsive records within DOE. We will therefore grant the present Appeal and refer the matter to OPI for further processing.

IV. Order

It is hereby ordered that the Appeal filed on July 31, 2017, by Bill Streifer, Case No. FIA-17-0024, is granted.

This matter is hereby referred to the Department of Energy's Office of Public Information, which shall issue a new determination in accordance with the instructions set forth in the above Decision.

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

³ We note that the Appellant has additional FOIA requests currently pending with OPI that seek related material. Those requests are HQ-2017-01471-F and HQ-2017-01469-F.

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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