

United States Department of Energy  
Office of Hearings and Appeals

In the matter of Caldera Pharmaceuticals, Inc. )  
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Filing Date: April 2, 2013 ) Case No.: FIA-13-0021  
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Issued: April 11, 2013

**Decision and Order**

On April 2, 2013, Caldera Pharmaceuticals, Inc. (“Appellant”) filed an Appeal from a determination issued to it on February 27, 2013, by the Office of Information Resources (OIR) of the Department of Energy (DOE) (FOIA Request Number HQ-2013-00447-F). In its determination, the OIR 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 the OIR has not produced. Thus, this Appeal, if granted, would require another search for the documents that the Appellant requested.

**I. Background**

On January 25, 2013, the Appellant submitted a FOIA request, seeking “documents relating to the determination that Caldera Pharmaceuticals, Inc.’s letter of intent was not responsive to the SBIR topic.” FOIA Request from Benjamin Warner, Caldera Pharmaceuticals, Inc., (Jan. 25, 2013). Specifically, the Appellant was seeking “documents relating to the determination that Caldera Pharmaceuticals, Inc.’s letter of intent LOI-0000003091 entitled ‘XRpro Tools and Sensors for Onsite and Field Monitoring,’ was not responsive to the FY 2013 DOE SBIR/SBIR Phase I Release 2 Funding Opportunity Announcement.” *See* Letter from Alexander C. Morris, FOIA Officer, OIR, to Benjamin Warner, CEO, Caldera Pharmaceuticals (Feb. 27, 2013) (Determination Letter). The above-mentioned determination pertains to a letter that the Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) program sent to the Appellant, informing it that its letter of intent was nonresponsive to the topic for which it was submitted. *See* Email from Carl Hebron, SBIR/STTR Program Coordinator, to Benjamin Warner (Jan. 11, 2013).

The OIR transferred the Appellant’s FOIA Request to the Office of Science (SC) to conduct a search for responsive documents. *See* Memorandum of Telephone Conversation between Joan Ogbazghi, OIR, and Shiwali Patel, OHA (Apr. 3, 2013). On February 27, 2013, the OIR issued a

Determination Letter informing Appellant that the SC staff completed their search and did not locate any documents responsive to his request. *See* Determination Letter.

In the instant Appeal, the Appellant challenges the adequacy of the search, claiming that there should be responsive records. Appeal at 1. Specifically, the Appellant contends that there should be emails between the Appellant and certain DOE employees concerning its letter of intent. *Id.* The Appellant also claims that “there should be documents relating to the determination that our SBIR letter of intent was not responsive, and responsive communications between Mr. Hebron and either Ms. Bates or Mr. Chamberlain regarding this letter of intent.” *Id.* Finally, the Appellant suggests a list of search terms that could have been applied in locating responsive documents and a list of offices within the DOE that it claims may contain responsive documents, including the SC, the National Nuclear Security Administration (NNSA) Headquarters, DOE Headquarters, and SBIR program offices. *Id.* at 2.

On April 3 and April 4, 2013, the OIR and the SC described their search methodology to our Office, the Office of Hearings and Appeals (OHA), for locating documents responsive to the Appellant’s 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).<sup>1</sup>

The OIR and the SC provided us with the following information with regards to their search for responsive records. The OIR informed us that it only transferred the FOIA Request to the SC because funding opportunities for small businesses are administered through the SBIR/STTR program, which is part of the SC. *See* Memorandum of Telephone Conversation between Joan Ogbazghi, OIR, and Shiwali Patel, OHA (Apr. 3, 2013). It further stated that the individuals listed in the Appellant’s FOIA Request – Ms. Bates, Mr. Chamberlain and Mr. Hebron – are all affiliated with the SC. *Id.* The OIR explained that the NNSA Headquarters would not have any responsive documents as only the SC has the authority to administer funding opportunities with the SBIR/STTR programs.<sup>2</sup> *Id.*

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

<sup>2</sup> While the EM is part of the NNSA, the SBIR/STTR topic managers do not confer with anyone in the NNSA as to their decisions regarding the letters of intent regarding funding opportunities for small businesses, and accordingly, the NNSA would not have any documents responsive to the Appellant’s FOIA Request. *See* Email from Chris O’Gwin, SC, to Shiwali Patel, OHA (Apr. 4, 2013).

The SC explained that the Office of Environmental Management (EM) reviewed the letter of intent. The EM confirmed with the SC that it did not have any documents related to its decision on the responsiveness of the Appellant's letter of intent. Memorandum of Telephone Conversation between Chris O'Gwin, SC, and Shiwali Patel, OHA (Apr. 4, 2013). The EM stated that when it receives the letters of intent, the program manager reviews the letters and then makes a determination as to the responsiveness of the letters, without documenting how it came to their decision. *Id.* In addition, the SC verified that the NNSA does not handle documents pertaining to the SBIR/STTR program. *Id.* Accordingly, the EM does not confer with anyone in the NNSA Headquarters regarding funding opportunities under the SBIR/STTR program. *Id.* Moreover, the SC conducted its own search for responsive documents, but did not locate any documents. *Id.* Hence, we are satisfied that the SC and the OIR have conducted an adequate search for documents that are responsive to the Appellant's FOIA Request. In addition to conducting its own search, the SC conferred with the only office that would have information regarding the Appellant's FOIA Request, the EM, which confirmed that it did not create any records documenting its analysis with regards to its decision on the Appellant's letter of intent and accordingly, had no documents responsive to the Request. As such, we are not convinced that an additional search using the terms suggested by the Appellant would reveal any responsive documents. The standard for agency search procedures is reasonableness, which "does not require absolute exhaustion of the files." *Miller*, 779 F.2d at 1384-85. Based on the foregoing, we are satisfied that the search for responsive documents was reasonable to satisfy the *Miller* standard.

Accordingly, we will deny the Appeal.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Benjamin Warner, on behalf of Caldera Pharmaceuticals, Inc., OHA Case Number FIA-13-0021, 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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Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: April 11, 2013