

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

In the Matter of Bill Streifer)		
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Filing Date: April 27, 2016)	Case No.:	FIA-16-0029
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Issued: May 25, 2016

Decision and Order

On April 27, 2016, Mr. Bill Streifer (Appellant) filed an Appeal from a determination issued to him on March 30, 2016, by the Office of Scientific and Technical Information (OSTI) of the Department of Energy (DOE) (Request No. OSTI-2016-00672-F). In that determination, OSTI responded to the Appellant’s request for information 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 OSTI to conduct an additional search for responsive information.

I. Background

OSTI is a DOE office “that collects, preserves, and disseminates DOE-sponsored research and development results.” *See* About OSTI, <http://www.osti.gov/home/about> (May 18, 2015). The Appellant filed a FOIA request with OSTI on March 16, 2016. In the request, the Appellant sought “documents that explain why the OSTI is aware of Dr. Fritz J. Hansgirg’s patents related to hydrogen production but not to his patents related to heavy water production.” Request from Appellant to OSTI (March 16, 2016). The Appellant provided a link showing search results in OSTI’s SciTech Connect online database for a search in the “author” field under “Hansgirg.” *Id.* The search results show bibliographic records on three patents attributed to Fritz Hansgirg related to hydrogen production. *Id.* The Appellant also attached to his request a patent dated May 2, 1939, attributed to Dr. Hansgirg and titled “Production of Heavy Water.” *Id.*

On March 30, 2016, OSTI issued a determination in which it informed the Appellant that it had conducted a search and found no responsive records. Determination Letter from Madelyn Wilson, FOIA Officer, to Appellant (March 30, 2016) at 1. OSTI stated that it had searched its online databases and found no records on patents by Dr. Hansgirg related to heavy water production. *Id.* The determination explained that new scientific and technical information is added to its records

when a DOE organization submits that information through an online submission process. *Id.* OSTI indicated that it does not have responsive records, at least in its web-based offerings, because the submission process does not capture information regarding decisions about the non-inclusion of scientific and technical information. *See id.*

On April 27, 2016, the Appellant filed this Appeal. Letter from Appellant to OHA (April 14, 2016) (Appeal). In the Appeal, the Appellant challenges the adequacy of OSTI's search for responsive records. Appeal at 2. The Appellant also asserts that OSTI should have passed on his request to offices outside OSTI so that they could conduct a search for Dr. Hansgirg's heavy water production patents or other responsive records.¹ *Id.* at 1-2.

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., Ralph Sletager*, Case No. FIA-14-0030 (2014).²

OSTI described to us the search that it conducted for responsive documents. As an initial matter, OSTI verified that it does not have any records on patents by Dr. Hansgirg related to heavy water production. In its SciTech Connect online database, OSTI conducted a search under "heavy water production." Memorandum of Telephone Conversation between Madelyn Wilson, OSTI, and Gregory Krauss, OHA (May 11, 2016) (Wilson Memo II) at 2. The search returned over 500 records. *Id.* However, when OSTI narrowed the search results by including "Hansgirg" in the author field, it found no records on patents by Dr. Hansgirg. *Id.* OSTI also performed a separate search with "Hansgirg" in the author field and without the term "heavy water production." *Id.* That search returned only the same bibliographic records on Dr. Hansgirg's patents pertaining to hydrogen production that the Appellant identified in his request. *See id.*

OSTI also searched for responsive records in a few other locations. First, OSTI performed a search for any patents by Dr. Hansgirg in DOepatents, an online database launched in 2007 that includes patents that resulted from a sponsorship by DOE through a grant, contract, cooperative agreement, or similar type of funding mechanism. *See* Memorandum of Telephone Conversation between Madelyn Wilson, OSTI, and Gregory Krauss, OHA (May 4, 2016) (Wilson Memo I); Email from Madelyn Wilson, OSTI, to Gregory Krauss (May 5, 2016). The search returned no records on patents by Dr. Hansgirg related to either subject. Wilson Memo I. Second, OSTI searched in

¹ The Appeal includes links to two patents in Google's patent records: (1) the same heavy water production patent that the Appellant attached to his request and (2) a second patent by Dr. Hansgirg from October 25, 1938, regarding heavy water production. *Id.* at 1-2.

² OHA FOIA decisions issued after January 3, 2012, may be accessed at <http://energy.gov/oha/foia-cases>.

another electronic resource, its Science Research Connection (SRC) database. The search returned records on the same hydrogen patents in the SciTech Connect database as well as an additional hydrogen production patent by Dr. Hansgirg, but it did not produce any records regarding his heavy water production patents. Wilson Memo II at 2. Finally, OSTI shared the request with its classified records division, which has records not available in OSTI's online products. *Id.* A search for Dr. Hansgirg's heavy water production patents found no records. *Id.*

OSTI explained to us that it currently collects only research results from research conducted in affiliation with DOE. Memorandum of Telephone Conversation between Jeffrey Given, OSTI, and Gregory Krauss, OHA (May 13, 2016) (Given Memo I) at 1. However, OSTI dates to 1947. Earlier in its history, OSTI collected scientific information that was of interest to DOE laboratories or researchers but that was not necessarily a product of research by DOE or its predecessor agencies. *Id.* Based on information from the Appellant, it appears that the hydrogen and heavy water production patents at issue are mostly or entirely from the 1930s, prior to the Manhattan Project or the establishment of the Atomic Energy Commission. *See* Appeal at 2. Thus, we have no reason to believe that Dr. Hansgirg's hydrogen production patents or heavy water production patents are a result of research conducted by DOE or its predecessor agencies. Accordingly, the bibliographic records on Dr. Hansgirg's hydrogen production patents may have been created by OSTI because researchers at DOE or its predecessor agencies decided those patents were of interest. *See* Given Memo I at 1.

During the course of this Appeal, OSTI also informed us that it found electronic information indicating that OSTI was aware of three of Dr. Hansgirg's hydrogen production patents by late 1976 and that a DOE publication from that time may have announced or referenced those patents. Memorandum of Conversation between Jeffrey Given, OSTI, and Gregory Krauss, OHA (May 19, 2016) (Given Memo II). OSTI was unable to locate the publication containing that announcement. Email from Jeffrey Given, OSTI, to Gregory Krauss, OHA (May 20, 2016). However, OSTI told us that it may have integrated information on those patents into its records around that time. *See* Given Memo II. Because it is not OSTI's practice to remove records when the focus of a collection changes, those records would have remained in OSTI's collection and become part of its current online products. *See* Given Memo I at 1.

The Appellant believes that at least one of Dr. Hansgirg's patents regarding heavy water production may have been classified at some point and that the classification status of that patent may have played a role in any decision not to include it in OSTI's records. Appeal at 2. However, as to why OSTI collected and made public Dr. Hansgirg's hydrogen production patents, but not his heavy water production patents, the OSTI officials we consulted ultimately could not provide an answer. In any event, the FOIA does not require agencies to "answer questions disguised as a FOIA request." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). Although it is an agency's responsibility to "construe a FOIA request liberally," *Nation Magazine v. United States Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995), an agency is not "obliged to look beyond the four corners of the request for leads to the location of responsive documents." *Kowalczyk v. U.S. Dep't of Justice*, 73 F.3d 386, 389 (D.C. Cir. 1996). Moreover, the FOIA does not require an agency to create a document in response to a FOIA request. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975).

In the instant matter, we consider it improbable that OSTI or any DOE organization possesses records that would specifically explain why OSTI collected bibliographic information on certain patents by Dr. Hansgirg but not on others. Although OSTI has located an electronic record suggesting that it collected bibliographic information about Dr. Hansgirg's hydrogen production patents by late 1976, that record does not explain why it decided to collect information on those patents and why it did not collect information on Dr. Hansgirg's heavy water production patents. The record therefore is not responsive to the Appellant's request. Accordingly, we find that OSTI conducted a search that was adequate and that it was unnecessary for OSTI to refer the request to any other DOE organization.

It Is Therefore Ordered That:

- (1) The Appeal filed on April 27, 2016, by Mr. Bill Streifer, Case No. FIA-16-0029, 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 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.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect the right to pursue litigation. FOIA requesters may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740
Web: ogis.archives.gov
Email: ogis@nara.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

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Director
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Date: May 25, 2016