

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

In the Matter of Mark Krebs	)		
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Filing Date: August 10, 2015	)	Case No.:	FIA-15-0044
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Issued: August 18, 2015

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**Decision and Order**

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On August 10, 2015, Mark Krebs (Appellant) filed an appeal from a determination issued to him by the Office of Information Resources (OIR) of the Department of Energy (DOE) (Request No. HQ-2015-01333-F). In that determination, OIR 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. As explained below, we have determined that the Appeal should be denied.

**I. Background**

On May 20, 2015, the Appellant filed a request with OIR for “estimates of what DOE considers to be the per unit costs to be to the consumer of more efficient furnace fan motors for this docket.” FOIA Request from Mark Krebs, The Laclede Group, to OIR (May 20, 2015). OIR assigned the request to the Office of Energy Efficiency and Renewable Energy (EE) to conduct a search for responsive documents. Determination Letter from Alexander C. Morris, OIR, to Mark Krebs, The Laclede Group (July 9, 2015). In its Determination Letter, OIR stated that EE’s search located no documents responsive to the Appellant’s request. *Id.*

On August 10, 2015, the Appellant appealed the determination challenging the adequacy of EE’s search. Appeal Letter from Mark Krebs, The Laclede Group, to Director, Office of Hearings and Appeals (OHA) (August 7, 2015). In his Appeal, the Appellant stated that at a March 27, 2015, public meeting held in connection with the residential furnaces energy conservation standards rulemaking, a DOE representative promised to “provide the reference for the fan motor pricing.” *Id.* When this information was not provided, the Appellant filed the FOIA request that led to this Appeal. *Id.* The Appellant asserts that DOE must have responsive records based on the fact that it

relied on some information when setting its pricing standard, that the existence of the information was discussed at the public meeting, and that DOE previously stated it would provide the requested information. *Id.*

## 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. 1982) (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>1</sup>

We contacted OIR to inquire about the search conducted for this request. OIR informed us that EE performed a manual search of its staff records and emails and found no documents responsive to the Appellant’s FOIA request. Memorandum of Telephone Conversation between Michael Schierloh, OIR, and Brooke DuBois, Attorney-Advisor, OHA (August 11, 2015). EE told OIR that although it had found no responsive documents, it believed that the requested information could be determined using various public resources. *Id.* Although not required by the FOIA, EE advised us that it was willing to provide references to the appropriate public sources and explain how the Appellant could estimate the costs to the consumer himself. *Id.*; Email from Ashley Armstrong, EE, to Brooke DuBois, Attorney-Advisor, OHA (August 11, 2015).

## III. Conclusion

Based on the foregoing, we are satisfied that EE conducted a search reasonably calculated to uncover the materials sought by the Appellant, and that this search was, therefore, adequate under the FOIA. Thus, we will deny the present Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on August 10, 2015, by Mark Krebs, Case No. FIA-15-0044, 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.

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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://www.energy.gov/oha>.

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Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: August 18, 2015