

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

In the Matter of Leo Conor Black)	
)	
Filing Date: June 6, 2016)	Case No.: FIA-16-0034
)	
_____)	

Issued: June 13, 2016

Decision and Order

On June 6, 2016, Leo Conor Black (Appellant) appealed a determination that he received from the Department of Energy’s (DOE) Office of Information Resources (OIR) on May 6, 2016 (Request No. HQ-2016-00793-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. The Appellant challenges the adequacy of OIR’s search for responsive documents. As explained below, we have determined that the Appeal should be denied.

I. Background

On April 14, 2016, the Appellant requested, “information about the \$37,500,000 account at Bankers Trust Company – particularly what disbursements were made from the account and when the account was closed.” FOIA Request Email from Leo Conor Black (April 13, 2016). In its May 6, 2016, Determination Letter, OIR states that it forwarded the request to the appropriate offices to conduct a search of their files, and no responsive documents were located. Determination Letter from Alexander C. Morris, FOIA Officer, OIR, to Leo Conor Black (May 6, 2016). The Determination Letter also indicated that responsive documents may exist under the jurisdiction of the National Archives and Records Administration (NARA); therefore, OIR transferred the Appellant’s FOIA Request to NARA on May 6, 2016.

On June 6, 2016, the Appellant appealed this Determination Letter challenging the finding of no responsive documents.¹ Appeal Email from Leo Conor Black to Office of Hearings and Appeals (OHA) Filings (June 3, 2016).

¹ In his Appeal Email, the Appellant requested judicial review in Federal district court, but later understood that he would have to exhaust the administrative appeal process with OHA before that option became available. Memorandum of Telephone Conversation between Leo Conor Black and Brooke DuBois, Attorney-Advisor, OHA (June 7, 2016)

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. Project on Government Oversight*, Case No. TFA-0489 (2011).

We contacted OIR to determine how the search was conducted for this request. Memorandum of Telephone Conversation between Yordanos Woldai, OIR, and Brooke DuBois, Attorney-Advisor, OHA (June 8, 2016). In response, OIR indicated that it forwarded the request to DOE’s Office of History and Heritage (History Office) and Office of the Chief Financial Officer (CFO). *Id.* CFO stated that the requested information was not under its jurisdiction but suggested, due to the age of the documents requested, that OIR consult with the History Office. *Id.* The History Office conducted a search of office publications and footnote files, using keywords like “Belgian,” “Belgium,” “Uranium,” and “Ore.”² *Id.* The History Office was unable to locate any responsive documents in its search, but informed OIR that if any records exist they would be at NARA. *Id.* OIR confirmed with NARA that it would generally possess such records if they existed and OIR transferred the request to NARA as indicated in the determination letter.³ *Id.*

III. Conclusion

Based on the foregoing, we are satisfied that OIR 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 June 6, 2016, by Leo Conor Black, Case No. FIA-16-0034, 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.
- (3) The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and

² These search words were appropriate based on the background information contained within the FOIA Request pertaining to the purpose of the account about which the Appellant requested information.

³ NARA will issue a separate determination letter to the Appellant once it completes its search.

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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: 202-7415769
Toll-free: 1-877-684-6448

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: June 13, 2016