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

In the Matter of (b) (6))
)
Filing Date: October 27, 2016) Case No.: FIA-16-0053
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_____)

Issued: November 4, 2016

Decision and Order

On October 27, 2016, (b) (6) (Appellant) appealed a determination received from the Department of Energy’s (DOE) Oak Ridge Office (ORO) (Request No. ORO-2016-01447-F). In that determination, ORO 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 ORO’s search for responsive documents. As explained below, we have determined that the Appeal should be denied.

I. Background

On September 13, 2016, the Appellant filed a FOIA request for emails to and from certain ORO employees during a specific timeframe which reference the Appellant, his request for telework, his disability, his request for accommodation for his disability or back, or “generally reference [the Appellant] in any way in the body of the email.” Email from (b) (6) to DOE Office of Science (September 13, 2016) (FOIA Request). On October 18, 2016, ORO issued a determination releasing 254 emails. Determination Letter from Linda G. Chapman, FOIA Officer, ORO, to (b) (6) (October 18, 2016) and Email from Linda G. Chapman, FOIA Officer, ORO, to Brooke DuBois, Attorney-Advisor, Office of Hearings and Appeals (OHA) (November 1, 2016). Only one individual mentioned in the FOIA Request had no responsive emails. *Id.*

On October 26, 2016, the Appellant appealed the Determination Letter.¹ Appeal Letter from (b) (6) to Director, OHA (October 20, 2016). In his Appeal, the Appellant asserted that

¹ The Appeal also included a new FOIA request for the same type of emails during a different time period. When OHA contacted ORO, we informed ORO of this new request and ORO indicated that the Appellant had also filed this same request with their office.

he received a small number of emails, which did not include many emails that he has good reason to believe exist. *Id.* The Appellant also questioned whether the named employees checked their deleted folders for responsive emails or if the employees deleted emails after receiving the FOIA Request because he believes he should have received more emails. *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. 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).²

We contacted ORO to determine how it conducted the search in this matter. ORO informed us that after receiving the FOIA Request, it contacted the Appellant to clarify his request and, after confirming the search parameters, all of the individuals named in the FOIA Request searched their emails. Email from Linda G. Chapman, FOIA Officer, ORO, to Brooke DuBois, Attorney-Advisor, Office of Hearings and Appeals (OHA) (November 1, 2016). These individuals used the search terms (b) (6), disability, telework, teleworking, accommodation, and back” to search all of their email folders during the requested time period. *Id.* Only one of the individuals named in the FOIA Request found no responsive emails. *Id.* The search located 254 emails equaling 687 pages which ORO provided to the Appellant.

III. Conclusion

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

It Is Therefore Ordered That:

- (1) The Appeal filed on October 27, 2016, by (b) (6), Case No. FIA-16-0053, 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.

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

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Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: November 4, 2016