



United States Patent and Trademark Office

Office of the General Counsel

January 21, 2022

VIA EMAIL

David Boundy
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RE: ***Freedom of Information Act Appeal No. A-22-00005 (Appeal of Request No. F-21-00084)***

Dear Mr. Boundy:

This determination responds to your letter dated December 28, 2021, to the United States Patent and Trademark Office (“USPTO” or “Agency”). This appeal is related to Freedom of Information Act (“FOIA”) Request No. F-21-00084. Your appeal has been docketed as FOIA Appeal No. A-22-00005.

FOIA Request and Response

In your initial request, dated March 12, 2021, you asked the Agency to produce:

[A]ll documents issued since, or in effect at any time since, the America Invents Act in September 2011 that purport to govern or recommend either form of signature, title of a signatory, or establishing authority of a natural person signatory to act on behalf of an applicant or assignee, for signatories who are not registered attorneys or agents. This request covers internal and external documents authored by the PTO or PTO personnel.

Excluded from this request are the text of the relevant regulations, 37 CFR § 1.4, § 1.32(b)(4), § 3.71, and § 3.73, but guidance, memoranda, instructions, or other documents (internal or external) that purports to elaborate on, or guide application of, regulation would be responsive.

During a telephone conversation with USPTO FOIA Officer Dorothy Campbell on December 8, 2021, and a follow-up email correspondence on December 9, 2021, you clarified that the “general scope” of your request was:

1. Documents that govern or recommend requirements for signatures, when the signatory is not an attorney/agent registered before the Office. (For anyone with a registration number, the inclusion of that registration number in a signature block solves all the problems that arise with other signatories).

2. The request covers signatures on any document that is typically signed by someone other than a registered attorney. Examples include powers of attorney, assignments, declarations, and § 3.73 statements.

During your phone conversation, you also expressed to Ms. Campbell that you were seeking the most updated version of a guidance document, “Apparent Authority Guidance for POA,” and/or any other guidance on signatory titles for power of attorney designations.

Based on your communications with Ms. Campbell, the Agency conducted a focused search and identified a document responsive to your request. The Agency responded to your request on December 17, 2021, and provided the responsive document, which was releasable in full. *See* Initial Determination (FOIA Request No. F-21-00084).

Appeal

You appealed the Agency’s initial determination by letter dated December 28, 2021.¹ In your appeal, you object that the Agency conducted an inadequate search. You reference a June 16, 2021, email from Ms. Campbell stating that the “initial search has resulted in a large number of potentially responsive records,” and state that “[r]educing a ‘large number’ to one page suggests that the December search was inadequate.” You assert that “the ‘focus’ of the request was any ‘secret rule’ relating to signatures or signatories” and that “[t]he fact that one secret document explaining a secret rule was produced hints at existence of other secret rules.” You further state that you did not intend to disclaim the full scope of your initial request in your written correspondence or during the December 9, 2021, phone call with Ms. Campbell.

When responding to a FOIA request, an agency is required to conduct a search that is “reasonably calculated to uncover all relevant documents.” *See Zavala v. Drug Enforcement Admin.*, 2010 WL 2574068, at *1 (D.C. Cir. 2010) (citing *Morley v. CIA*, 508 F.3d 1108, 1114 (D.C. Cir. 2007)). An agency is not expected to take extraordinary measures to find requested records, but to conduct a search reasonably designed to identify and locate responsive documents. *Garcia v. U.S. Dep’t of Just.*, 181 F. Supp. 2d 356, 366 (S.D.N.Y. 2002). An agency must search files likely to contain responsive materials. *Prison Legal News v. Lappin*, 603 F. Supp. 2d 124, 126 (D.D.C. 2009). The standard for the reasonableness of the search is “generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Mosby v. Hunt*, No. 10-5296, 2011 WL 3240492, at* 1 (D.C. Cir. 2011) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 313-16 (D.C. Cir. 2003)).

Based on your clarification in your appeal that you did not intend to narrow the scope of your request by your statements to Ms. Campbell, I am remanding this appeal and directing the FOIA Officer to review any additional records responsive to your initial request for possible disclosure, subject to any exemptions.

¹ On December 30, 2021, you submitted a replacement copy of your appeal, which you indicated was identical to the December 28 submission but deleted redundant exhibit divider sheets.

Final Decision and Appeal Rights

I have neither granted nor denied your appeal, and you retain the right to appeal the response from the FOIA Officer on remand. Nonetheless, you are advised that you have the right to seek judicial review of this action as provided in 5 U.S.C. § 552(a)(4)(B). Judicial review is available in the United States District Court for the district in which you reside or have a principal place of business, the United States District Court for the Eastern District of Virginia, or the United States District Court for the District of Columbia.

Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created 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 your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

Sincerely,

David Shewchuk
Deputy General Counsel for General Law