



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

June 22, 2021

VIA ELECTRONIC MAIL

Randy Landreneau
U.S. Inventor
P.O. Box 2273
Clearwater, FL 33757
rlinventor@protonmail.com

RE: ***Freedom of Information Act Appeal No. A-21-00001 (Appeal of Request No. F-21-00090)***

Dear Mr. Landreneau:

This determination responds to your email to the United States Patent and Trademark Office (“USPTO” or “Agency”) received on May 26, 2021, appealing the USPTO’s initial determination in connection with your Freedom of Information Act (FOIA) Request No. F-21-00090. Your appeal has been docketed as FOIA Appeal No. A-21-00001.

FOIA Request and Response

Your initial request, dated April 6, 2021, asked for the following:

1. Under 5 CFR § 451.106(b), when the PTO recommends a bonus award that “would grant more than \$10,000 to an individual employee, the agency shall submit the recommendation to OPM for approval.” Please provide copies of all communications, documents, and records the PTO submitted to OPM pursuant to 5 CFR § 451.106(b) recommending awards for any of the fiscal years 2012-2020 inclusive, to any PTO employee working for the Patent Trial and Appeal Board. This request also covers any records the PTO submitted to OPM in support of such requests for approval, including those requested by OPM per 5 CFR § 451.106(h).
2. Please provide copies of all communications, documents, records, and approvals that the PTO received from OPM in response to, and with respect to PTO’s requests identified in Request 1 above.

See FOIA Request No. F-21-00090.

The Agency initially responded to your request on May 4, 2021. In that response, the Agency advised you that the only bonuses in excess of \$10,000.00 paid to Patent Trial and Appeal Board (PTAB) employees were to Senior Executive Service (SES) members; those payments are not

subject to 5 C.F.R. § 451.106(b), *see* 5 C.F.R. § 534.105, and so any documents related to those payments are not responsive to your request. Therefore, you were further advised, the Agency identified no documents that were responsive to your request.

Appeal

In your May 25, 2021, appeal, you asserted that the Agency's response "was outright false." You base that statement on your review of publicly available data on the pay of APJs that "clearly indicates otherwise." You also assert that the USPTO may not charge fees concerning this request because it "failed to provide written notice within the FOIA time limits set forth in 5 U.S.C. § 552(a)(6)(B)."

Reasonableness of Search

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)).

You asked for copies of documents concerning recommendations to the U.S. Office of Personnel Management (OPM) to pay bonuses to employees of the PTAB in excess of \$10,000.00. In response to your appeal, a second search for the requested records was performed that, like the first search, did not reveal any responsive documents.

In support of your appeal, you refer to what you describe as publicly available data that appear to show that some APJs have received bonuses in excess of \$10,000.00 in particular calendar years. Employee performance appraisal support for APJs is provided by the Executive Resources Division, a unit within the Agency's Office of Human Resources. There is a single point of contact within Executive Resources for non-SES APJ awards. That individual reports that she has seen no recommendations for individual bonuses in excess of \$10,000.00 for non-SES APJs. In addition, she reviewed her office's records and confirmed that no such bonuses were recommended during the years 2012-2020. The Agency notes that the requirement for OPM approval of awards in excess of \$10,000.00 concerns individual awards. There is no requirement to consult OPM if an employee receives more than one individual award that cumulatively total in excess of \$10,000.00.

The Agency twice conducted a reasonable search for the records you requested, and has identified no responsive documents. Therefore, the appeal is denied.

Finally, concerning your assertion that the Agency may not charge fees in this case due to failing to meet statutory deadlines, the Agency has not attempted to charge fees here. However, I will point out that the Agency's initial response complied within the deadline set forth at 5 U.S.C. § 552(a)(6)(A).

Final Decision and Appeal Rights

This is the final decision of the United States Patent and Trademark Office with respect to your appeal. You have the right to seek judicial review of this denial 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
E-mail: ogis@nara.gov
Telephone: 202-741-5769

Sincerely,

David Shewchuk
Deputy General Counsel for General Law
Office of the General Counsel