



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

Stop 9613

May 6, 2020

Via electronic mail

[Redacted]

[Redacted]

Probes Reporter
P.O. Box 47331
Plymouth, MN 55447

Probes Reporter®

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Re: Appeal, Freedom of Information Act Request No. [Redacted] designated on
appeal as No. [Redacted]

Dear [Redacted]

This responds to your Freedom of Information Act (FOIA) appeal of the FOIA Officer's denial of your January 23, 2020 FOIA request for certain investigative records concerning Wirecard AG/ADR that the Commission has generated since January 23, 2018. By letter dated January 28, 2020, the FOIA Office informed you that it could not locate any responsive records. On March 19, 2020, you filed this FOIA appeal challenging the adequacy of the FOIA Office's search. I have considered your appeal and it is denied.

The FOIA requires agencies to conduct a reasonable search for records responsive to a request.¹ A reasonable search is one that is calculated to locate responsive documents.² The question raised by a challenge to the adequacy of a search is "whether the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document."³ "[T]he adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search."⁴ Further, "there is no requirement that an agency search every record system."⁵

¹ See *Oglesby v. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

² See *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983); *Steinberg v. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

³ *SafeCard Services, Inc. v. SEC*, 926 F.2d 1197, 1202 (D.C. Cir. 1991).

⁴ *Jennings v. Dep't of Justice*, 230 F. App'x 1, 1 (D.C. Cir. 2007) (quoting *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)).

⁵ *Oglesby*, 920 F.2d at 68.

In responding to your request, FOIA Office staff reviewed computer indices for investigations. I have confirmed that no responsive records were generated during the time period specified in your request (January 23, 2018 to January 23, 2020) that “directly pertain to the conduct, disclosures, and/or transactions of the registrant, Wirecard AG/ADR.” Accordingly, the search conducted was reasonable and adequate.

You have the right to seek judicial review of my determination by filing a complaint in the United States District Court for the District of Columbia or in the district where you reside or have your principal place of business.⁶ Voluntary mediation services as a non-exclusive alternative to litigation are also available through the National Archives and Records Administration’s Office of Government Information Services (OGIS). For more information, please visit www.archives.gov/ogis or contact OGIS at ogis@nara.gov or 1-877-684-6448. If you have any questions concerning my determination, please contact [redacted]

[redacted]

For the Commission
by delegated authority,

[redacted]

⁶ See 5 U.S.C. § 552(a)(4)(B).