

United States Department of Energy
Office of Hearings and Appeals

In the Matter of Clarence Dorsey)
)
Filing Date: October 29, 2013) Case No.: FIA-13-0068
_____)

Issued: November 6, 2013

Decision and Order

On October 29, 2013, Clarence Dorsey (“Appellant”) filed an Appeal from a determination issued to him on October 11, 2013, by the Oak Ridge Office (ORO) of the Department of Energy (DOE) (Privacy Act Request ORO-2013-00708-PA). In its determination, ORO responded to the Appellant’s request for information filed under the Privacy Act, 5 U.S.C. § 552a, as implemented by DOE in 10 C.F.R. Part 1008. This Appeal, if granted, would require ORO to conduct another search for the requested documents.

I. Background

On August 6, 2013, the Appellant submitted a Privacy Act Request seeking:

Studies or experiments of Iodine-131 or any radioactive or toxic substances or chemical substances. These experiments were in Jackson, Mississippi between January 1964 to December 1965 where human subjects were used and injected with iodine-131 or any radioactive or toxic substance or chemical substances. Also include any and all locations in Mississippi where this was done. Please include any all records of any follow-up of these human subjects.

Any and all records of Clarence W. Dorsey in these experiments, or any similar names of any other names. Studiest [sic] in which the follow-up was done by sending agents to check the subject with a Geiger Counter or other such device, where agents were sent to (address 1541 Booker Street, Jackson, Mississippi).

The Mississippi State Department of Health Tracking Number for this experiment or studys [sic] is 1012565. Please release to me any and all information related to this tracking number and all requested information.

On August 30, 2013, DOE’s Office of Information Resources transferred the Appellant’s Privacy Act Request to ORO. On October 11, 2013, ORO responded to the Privacy Act Request stating

that it searched for records at its site, contractor sites and repositories, but could not locate any documents. ORO then informed the Appellant that the Mississippi State Department of Health may possess the documents that he seeks, and ORO provided its mailing address in its response. See Determination Letter from Amy Rothrock, Authorizing Official, to Appellant (Oct. 11, 2013). On October 29, 2013, the Appellant submitted the instant Appeal of ORO's response.

II. Analysis

In assessing the adequacy of a search under the Privacy Act, courts apply the "adequacy of search" analysis as under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. *Sussman v. U.S. Dep't of Justice*, 03 Civ. 3618 DRH ETB, 2006 WL 2850608 (E.D.N.Y. Sept. 30, 2006); see *Shores v. FBI*, 185 F. Supp. 2d 77, 82 (D.D.C. 2002); cf. *Sneed v. U.S. Dep't of Labor*, 14 Fed. Appx. 343, 345 (6th Cir. 2001). In responding to a request for information filed under the FOIA, it is well established that an agency must conduct a search "reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (quoting *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). "[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*, 897 F.2d at 542. 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).¹

Upon further inquiry, ORO described the search for the records requested by the Appellant. See Facsimile from Elizabeth Dillon, FOIA/PA Officer, ORO, to Shiwali Patel, Attorney-Examiner, OHA (Nov. 4, 2013). The search was conducted by the Records Holding Area (RHA) and the Oak Ridge Associated Universities (ORAU). *Id.* An RHA employee searched physical files that contained various personnel and medical records.² See Email from Lori Njeru, RHA, Administrative Support Specialist, to Elizabeth Dillon, FOIA/PA Officer, ORO (Oct. 30, 2013). Even when RHA conducted another search of its files, including a keyword search in the database systems, RHA still could not locate any responsive documents. See *id.* Moreover, ORAU informed ORO that seven of its employees conducted a search for responsive records utilizing several methodologies. See Email from Kathy Myers, General Counsel's Office, ORAU, to Elizabeth Dillon, FOIA/PA Officer, ORO (Oct. 31, 2013). Those individuals searched various databases that pertained to radiation exposure and monitoring information, work history, and dosimetry.³ See *id.* Moreover, they conducted a manual search of ORAU's

¹ Decisions issued by the OHA after November 19, 1996, are available on the OHA website located at <http://www.energy.gov/oha>.

² RHA listed 23 different files that were searched, including ORAU's cabinets, salary and wage folders, urine sample cards, blood count cards, physical examination reports and other various records.

³ The following databases were searched by ORAU: Radiation Exposure Information & Reporting System (REIRS) Database, Radiation Exposure Monitoring System (REMS) Database, Work History Database, National Supplemental Screening Program (NNSP) Database, Beryllium Database, Dosimetry Database, Radiation Emergency Assistance Center/Training Site (REAC/TS) Registry Database, Records Management Sequel Database, Oak Ridge Institute Nuclear Studies (ORINS) Blue Book Database, Comparative Animal Research Laboratory (CARL) Database.

previous annual reports in the medical division and they contacted former medical division employees to inquire about medical testing involving employees in Jackson, Mississippi by name, Iodine-131, and Iodine-131 testing. *See id.* After conducting these searches, ORAU could not locate any responsive documents.

Based on the foregoing, we are satisfied that ORO has conducted an adequate search for documents that are responsive to the Appellant's Privacy Act Request. As stated above, the standard for agency search procedures is reasonableness, which "does not require absolute exhaustion of the files." *Miller*, 779 F.2d at 1384-85. Here, it is apparent that ORO conducted a reasonable search to locate the records that the Appellant requested.

It Is Therefore Ordered That:

(1) The Privacy Act Appeal filed by the Appellant on October 29, 2013, OHA Case Number FIA-13-0068, 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 5 U.S.C. 552a(g)(1). 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.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: November 6, 2013