

Case No. VFA-0764

October 23, 2002

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Stephen A. Jarvis

Date of Filing: September 17, 2002

Case Number: VFA-0764

This Decision and Order concerns an Appeal that Stephen A. Jarvis filed from a determination issued to him by the Privacy Act Officer, Office of Communications, Richland Operations Office (Richland). In this determination, Richland responded to Mr. Jarvis' request for information under the Privacy Act (PA), 5 U.S.C. § 552a, as implemented by the DOE in 10 C.F.R. Part 1008. The PA requires that each federal agency permit an individual to gain access to information about himself that is contained in any system of records maintained by the agency. 5 U.S.C. § 552a(d). The Appeal, if granted, would require Richland to conduct another search for responsive documents.

In his request, Mr. Jarvis sought a copy of his Hanford site radiation exposure record and a copy of his personnel security file. In its response, Richland provided a copy of the exposure record, but stated that the personnel security file had been destroyed in April 1990 in accordance with a Records Inventory and Disposition Schedule (RIDS). The response further stated that these schedules are approved by the Archivist of the United States and mandate how long specific records are to be maintained. In his Appeal, Mr. Jarvis challenges the adequacy of Richland's search for the file.

DOE regulations define a system of records as "a group of any records under DOE control from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particulars assigned to the individual." 10 C.F.R. § 1008.2(m). Under the PA, an office that issues a determination to a requester must insure that it has searched for records that are retrieved by name or other personal identifier of the requester in every relevant system of records under its control. *Diane C. Larson*, 27 DOE ¶ 80,110 (1998).

We have often reviewed the adequacy of a search conducted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10

C.F.R. Part 1004. A PA request requires only a search of systems of records, rather than a search of all agency records, as is required under the FOIA. Nevertheless, the standard of sufficiency that we demand of a PA search is no less rigorous than that of a FOIA search. Therefore, we will analyze the adequacy of the search conducted by Richland in the case at hand using principles that we have developed under the FOIA.

We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Butler, Vines and Babb, P.L.L.C.*, 25 DOE ¶ 80,152 (1995). The FOIA, however, 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. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). 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. 1982).

In order to determine whether the search conducted was adequate, we contacted Richland. We were informed that the applicable RIDS schedule called for the destruction of Mr. Jarvis' file 10 years after it became inactive in 1980. When Richland's security division searched its database for the file, an entry for Mr. Jarvis was discovered, with the notation "Destroyed." Richland security personnel also searched the national database for DOE personnel security files without success. This database is purged of files that have been inactive for 10 months. *See* memorandum of October 9, 2002 telephone conversations between Robert Palmer, OHA Staff Attorney, and Sarah Prein, Richland.

Based on the foregoing, we conclude that Richland's search was adequate, and that Mr. Jarvis' file has in fact been destroyed. We will therefore deny his Appeal.

It Is Therefore Ordered That:

(1) The Appeal filed by Stephen A. Jarvis in Case No. VFA-0764 is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review. 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.

George B. Breznay

Director

Office of Hearings and Appeals

Date: October 23, 2002