

United States Department of Energy
Office of Hearings and Appeals

In the matter of Sam Lyle)
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Filing Date: June 24, 2013) Case No.: FIA-13-0037
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_____)

Issued: June 27, 2013

Decision and Order

On June 24, 2013¹, Sam Lyle (“Appellant”) filed an Appeal from a determination issued to him on May 2, 2013, by the Oak Ridge Office (ORO) of the Department of Energy (DOE) (Privacy Act Request ORO-2013-00307-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 November 1, 2012, the Appellant submitted a Privacy Act Request seeking records pertaining to the following: “personnel, payroll, wage, employment history/training,” “medical, hearing/audiograms, X-ray reports, accidents,” “radiation, exposure, radiation, incidents/accident/spills,” “industrial hygiene (non-radiological exposures),” “beryllium worker studies and/or LPT test records,” and “National Supplemental Screening Program (NSSP) or Former Worker Medical Screening program participant records.” In his Request, the Appellant indicated that he was employed by “Rust, Martin Marietta, B+W, Lockheed [and] Union C.”, and worked at the following DOE facilities: “Y-12, X-10, [and] K-25.”

ORO issued its Determination Letter on May 2, 2013, stating that on March 20, 2013, it provided the Appellant with “copies of a ‘Work History Abstract Form’ and work history report.” Determination Letter from Amy L. Rothrock, ORO, to Appellant (May 2, 2013). ORO stated that it also provided the Appellant with copies of his “medical records, radiation exposure records, beryllium medical records, and work history report from the U.S. Department of Energy Oak Ridge Office’s former K-25 plant, Oak Ridge National Laboratory, and Oak Ridge Associated Universities,” and that “[n]o other further records were found.” *Id.*

¹ While the Office of Hearings and Appeals (OHA) received the Appeal letter on June 7, 2013, postmarked on May 31, 2013, it was not deemed properly filed until June 24, 2013, when OHA received a copy of the Determination Letter.

ORO further stated that it had informed the Appellant on March 15, 2013, that it transferred his Request to the National Nuclear Security Administration (NNSA) to respond separately to the Appellant's Privacy Act Request for records located at the Y-12 National Nuclear Complex. *Id.*

The Appellant's Appeal, in its entirety, states: "Incomplete. Most important data needed form [sic] X10 ORNL. A portion of the information is included in this packet, but has not been used."

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 (FOIA). *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).²

In response to our inquiries, ORO provided us with additional information to evaluate the reasonableness of its search. ORO stated that although the Appellant may have worked at the Oak Ridge National Laboratory (ORNL), he was actually employed out of the Y-12 National Security Complex by private contractors. Email from Linda Chapman, Legal Assistant, FOIA/Privacy Act Office, ORO, to Shiwali Patel, Attorney-Examiner, OHA (June 26, 2013). Furthermore, ORO stated that as the Appellant indicated in his Privacy Act Request that he worked at the Y-12, K-25 and X-10 (ORNL) sites, it conducted searches at ORNL, the former K-25 plant, Oak Ridge Associated Universities (ORAU) and ORO's Records Holdings Area. *Id.* As Y-12 is now under NNSA, ORO transferred the Appellant's Request pertaining to his work at Y-12 to NNSA. ORO stated that it does not know the status of NNSA's search for those records, nor will it receive any information from NNSA regarding its search. *Id.*

As to the Appellant's request for records pertaining to his work at the K-25 and X-10 facilities, ORO stated that "ORNL found medical records from where Mr. Lyle visited their medical facility while he was employed by The Rust Engineering Company (Rust)," and that "Rust employees did do work at all three plants (Y-12, K-25, and ORNL)." *Id.* ORO asserted that "[n]o other records were found at ORNL since he was never an employee there." It provided the responsive documents that it located to the Appellant: radiation exposure records, beryllium test

² Decisions issued by the OHA after November 19, 1996, are available on the OHA website located at <http://www.energy.gov/oha>.

records, work history report and a work history abstraction form. *Id.* ORO located these documents at ORAU, URS CH2M Oak Ridge LLC (UCOR), which manages the former K-25 plant, and ORO's Records Holdings Area. *Id.*

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 clear that ORO conducted a reasonable search to locate records that were requested by the Appellant.

It Is Therefore Ordered That:

(1) The Privacy Act Appeal filed by the Appellant on June 24, 2013, OHA Case Number FIA-13-0037, 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: June 28, 2013